

## AGRICULTURE, TRADE AND CONSUMER PROTECTION

Budget Summary							
Fund	2000-01 Base Year Doubled	2001-03 Governor	2001-03 Jt. Finance	2001-03 Legislature	2001-03 Act 16	Act 16 Change Over Base Year Doubled Amount	Percent
GPR	\$56,955,000	\$73,837,500	\$68,081,400	\$60,229,200	\$59,729,200	\$2,774,200	4.9%
FED	12,578,200	14,304,400	13,863,400	13,863,400	13,863,400	1,285,200	10.2
PR	36,549,800	37,746,800	38,816,600	39,761,800	39,145,200	2,595,400	7.1
SEG	<u>31,915,600</u>	<u>29,416,700</u>	<u>23,354,100</u>	<u>39,422,900</u>	<u>39,198,500</u>	<u>7,282,900</u>	22.8
TOTAL	\$137,998,600	\$155,305,400	\$144,115,500	\$153,277,300	\$151,936,300	\$13,937,700	10.1%
BR		\$7,000,000	\$7,000,000	\$7,000,000	\$7,000,000		

FTE Position Summary						
Fund	2000-01 Base	2002-03 Governor	2002-03 Jt. Finance	2002-03 Legislature	2002-03 Act 16	Act 16 Change Over 2000-01 Base
GPR	292.61	312.91	303.61	292.61	292.61	0.00
FED	69.52	68.52	68.52	68.52	68.52	- 1.00
PR	228.97	213.50	233.62	227.00	220.00	- 8.97
SEG	<u>73.25</u>	<u>78.72</u>	<u>67.60</u>	<u>90.72</u>	<u>88.72</u>	<u>15.47</u>
TOTAL	664.35	673.65	673.35	678.85	669.85	5.50

### Budget Change Items

### Departmentwide and Resource Management

#### 1. STANDARD BUDGET ADJUSTMENTS

**Governor/Legislature:** Provide \$543,800 in 2001-02 and \$551,100 in 2002-03 for adjustments to the base budget for: (a) turnover reduction (-\$241,200 GPR, -\$53,100 FED and -\$108,000 PR annually); (b) removal of noncontinuing items (-\$50,000 GPR and -1.00 FED position annually); (c) full funding of salaries and fringe benefits (\$629,400 GPR,

Funding Positions		
GPR	\$730,700	0.00
FED	317,400	- 1.00
PR	- 114,800	0.00
SEG	<u>61,600</u>	<u>0.00</u>
Total	\$994,900	- 1.00

\$208,900 FED, \$39,800 PR and \$17,900 SEG annually); (d) reclassifications and semi-automatic pay progression (\$15,100 GPR and \$2,200 PR in 2001-02, \$18,800 GPR and \$5,800 PR in 2002-03, and \$11,700 SEG annually); (e) BadgerNet increase (\$1,400 GPR and \$1,800 PR annually); and (f) fifth vacation week as cash for certain long-term employees (\$8,800 GPR, \$2,900 FED, \$5,000 PR and \$1,200 SEG annually).

## 2. BASE BUDGET REDUCTION [LFB Paper 245]

GPR	- \$2,026,400
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**Governor:** Reduce DATCP's largest GPR state operations appropriation (related to food safety and consumer protection) by \$1,013,200 annually. The total reduction amount was derived by making a reduction of 5% to the adjusted base level of DATCP sum certain state operations GPR appropriations. Include session law language permitting the agency to submit an alternative plan to the Secretary of Administration for allocating the required reduction among its sum certain GPR appropriations for state operations purposes. Provide that if the DOA Secretary approves the alternative reduction plan, the plan must be submitted to the Joint Committee on Finance for its approval under a 14-day passive review procedure. Specify that if the Secretary of Administration does not approve the agency's alternative reduction plan, the agency must make the reduction to the appropriation as originally indicated.

**Joint Finance/Legislature:** Include the Governor's recommendation as modified to allow DATCP to submit a request to the Joint Committee on Finance under s. 13.10 to reallocate any of the reductions to other sum certain GPR appropriations for state operations made to the agency.

[Act 16 Section: 9159(1)]

## 3. LAND AND WATER RESOURCE MANAGEMENT BONDING [LFB Paper 676]

BR	\$7,000,000
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**Governor/Legislature:** Provide an increase in general obligation bonding authority of \$7,000,000 for the land and water resource management grant program. Revenue would be used to provide cost sharing grants to counties for land and water conservation activities. \$6,575,000 in bonding is currently authorized to DATCP for these activities.

[Act 16 Sections: 394 and 972]

## 4. CONVERT NONPOINT APPROPRIATION TO GPR [LFB Paper 675]

	Governor (Chg. to Base)		Legislature (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR	\$9,752,200	11.00	- \$9,752,200	-11.00	\$0	0.00
SEG	- 9,752,200	- 11.00	9,752,200	11.00	0	0.00
Total	\$0	0.00	\$0	0.00	\$0	0.00

**Governor:** Delete an annual SEG appropriation for the soil and water resource management program and convert \$4,876,100 SEG annually with 11.0 positions from the nonpoint account of the environmental fund to GPR. Funding of \$904,800 annually is allocated for staff to administer DATCP land and water resource management program activities. Additionally, \$3,971,300 annually is provided for landowner cost-sharing and county staffing grants, including funding for priority watershed staff. The grant funding converted to GPR would be provided in an existing GPR continuing appropriation funded at \$9,847,000 annually under the bill.

**Senate/Legislature:** Delete provision.

## **5. LAND AND WATER RESOURCE MANAGEMENT COUNTY STAFFING GRANTS** [LFB Paper 675]

**Joint Finance:** Specify that local match requirements of 30% for a second staff person and 50% for any additional staff persons for DATCP staffing grants are minimums and determined by DATCP. Further, for a grant award before 2010, require DATCP to require a county to provide matching grants for priority watershed project staff equal to not less than 10% nor more than 30% of the staff funding that was provided to the county for 1997 for a priority watershed that was designated before July 1, 1998, as long as it is before the termination date that was in effect on October 6, 1998, for the priority watershed project.

**Senate:** Modify the Joint Finance provision to specify that local match requirements equal to 30% for a second staff person and 50% for any additional staff persons for DATCP staffing grants are determined by DATCP.

**Assembly/Legislature:** Include the Joint Finance provision as modified to specify that local match requirements equal to 30% for a second staff person and 50% for any additional staff persons for DATCP staffing grants are determined by DATCP by administrative rule.

[Act 16 Sections: 2380g and 2380i]

## **6. SOUTH FORK OF THE HAY RIVER WATERSHED FUNDING**

**Joint Finance:** Extend the statutorily designated South Fork of the Hay River priority watershed sunset date from June 30, 2001, to June 30, 2006 and require DATCP to provide funding to counties for staffing in the South Fork of the Hay River priority watershed (in Barron, Dunn, Polk and St. Croix Counties) in the same manner as other continuing priority watersheds receive staffing funds.

**Assembly/Legislature:** Include the Joint Finance provision as modified to extend the sunset date to June 30, 2005.

[Act 16 Section: 3176m]

## 7. INFORMATION TECHNOLOGY [LFB Paper 205]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
PR	\$1,337,200	- \$135,000	\$1,202,200

**Governor:** Provide \$665,600 in 2001-02 and \$671,600 in 2002-03 to reflect chargebacks to various agency appropriations for IT expenditures, and change the IT appropriation from annual to biennial. It is estimated that \$739,300 in spending authority is needed to convert the Department's computers to Windows 2000 and \$464,000 for new laptops, with other funds used to replace other computers and to maintain hardware and software. Base funding in the appropriation is \$1,537,200 annually.

**Joint Finance/Legislature:** Provide an additional \$121,500 in 2001-02 and delete \$256,500 in 2002-03 to reestimate expenditure authority needed for desktop licenses, laptops and high-end printers and to remove one-time network conversion costs from the appropriation's base for the 2003-05 biennium. Further, retain the appropriation as annual.

## 8. LABORATORY SERVICES AND EQUIPMENT

PR	\$241,000
SEG	241,000
Total	\$482,000

**Governor/Legislature:** Provide \$126,000 SEG in 2001-02 and \$115,000 SEG in 2002-03 from the agrichemical management fund, and request increased spending authority of \$126,000 PR in 2001-02 and \$115,000 PR in 2002-03 to reflect chargebacks to agrichemical management funded appropriations for laboratory equipment purchases. Laboratory equipment would be used for fertilizer and pesticide related soil and water analyses. Further, transfer 0.5 vacant technician position and \$13,800 annually in related funding from a milk standards PR appropriation to a general laboratory services PR appropriation to meet projected workload in the general laboratory services program.

## 9. DRAINAGE DISTRICT PERMITTING AND GIS MAPS

**Assembly:** Provide that a drainage district drain used primarily for agricultural purposes (including aquaculture) be specified as not navigable unless a United States Geological Survey map or other equally reliable scientific evidence shows that the drain was a navigable stream before it became a district drain. Allow county drainage boards to place structures or deposits in a district drain for primarily agricultural purposes without a Department of Natural Resources (DNR) permit if, after consulting with DNR, DATCP either specifically approves the

placement, or the structure or deposit is required by DATCP rule to conform to approved drain specifications, regardless of whether the district drain has been designated a class 1 trout stream. Further, allow county drainage boards to clean material from a district drain for agricultural purposes without a DNR permit as long as the removal is required by DATCP rule, after consulting with DNR, to conform to drain specifications.

Delete the requirement that a drainage district must have a permit to acquire or remove any dam or obstruction from navigable waters or to clean out, deepen, widen or straighten any navigable stream. Eliminating some permit requirements for drainage boards would decrease fee revenues (and associated workload) to DNR. Unless a drainage district is dissolved, require DNR to consult with DATCP (as well as drainage commissioners under current law) on the operation and maintenance of dams. While DNR is required to give careful consideration to suggestions, DNR retains final decision authority on the operation and maintenance of dams (including dams in the Duck Creek Drainage District only if it fails to operate according to statutes).

If the Outagamie Drainage District No. 6 (Duck Creek Drainage District) fails to operate, repair and maintain dams and other structures in district drains in accordance with DATCP rules and Chapter 88 (Drainage of Lands) of the statutes, require DNR to consult with DATCP and the drainage commissioners on the operation and maintenance of the dams, or if there are no commissioners, with DATCP and any committee appointed by the county board to represent the county's interest.

In addition, require counties to submit any preliminary geographic information system (GIS) maps they produce that include streams, ditches, dikes or levees to any drainage district with land in that county. Further, require the drainage districts to notify the county within 120 days after receiving the map if there is an error or omission in the map. Require the county to correct the identified error or omission if it concurs with the drainage district. However, if the county disagrees with the drainage district, require the county to notify the drainage district and the Land Information Board, and require the Land Information Board to resolve the conflict.

**Conference Committee/Legislature:** Delete provision.

## **10. DRAINAGE BOARD GRANTS**

**Governor/Legislature:** Make a technical correction to clarify that the sunset of the drainage board grant program is June 30, 2006, as intended in 1999 Act 9 (the biennial budget act).

[Act 16 Section: 422]

## 11. DRAINAGE DISTRICT ENGINEERING SERVICES WEB SITE

	Jt. Finance/Leg. (Chg. to Base)	Veto (Chg. to Leg)	Net Change
PR	\$210,000	- \$210,000	\$0

**Joint Finance:** Provide \$200,000 in 2001-02 and \$10,000 in 2002-03 in a new, annual appropriation and require DATCP to create and maintain a secure website for drainage districts to post engineering projects with the purpose of obtaining electronic bids for drainage district engineering services. Further, require DATCP to promulgate rules to set fees to cover the costs of the website.

**Senate:** Delete provision.

**Conference Committee/Legislature:** Include the Joint Finance provision.

**Veto by Governor [B-6]:** Delete provision.

[Act 16 Vetoes Sections: 395 (as it relates to s. 20.115(7)(i)), 423g and 2351h]

## 12. AGRICULTURE IN THE CLASSROOM

SEG	\$200,000
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**Assembly/Legislature:** Provide \$100,000 annually in a new, annual appropriation from the agrichemical management fund for grants to the organization responsible for administering the USDA Agriculture in the Classroom program to help teachers educate students about agriculture.

[Act 16 Sections: 421h and 2390p]

## 13. CONSOLIDATE AGRICHEMICAL MANAGEMENT APPROPRIATIONS

**Governor/Legislature:** Delete three annual SEG appropriations from the agrichemical management (ACM) fund related to: (a) groundwater standards implementation; (b) fertilizer additives and commercial feed regulation; and (c) pesticide regulations and the agricultural chemical cleanup program and transfer the expenditure authority (\$4,068,400 in 2001-02 and \$4,060,400 in 2002-03) to an agrichemical management general program operations annual SEG appropriation from the ACM fund.

[Act 16 Sections: 427 thru 429]

#### 14. AGRICULTURAL CHEMICAL CLEANUP PROGRAM GRANT EXPANSION

**Senate/Legislature:** Increase the amount DATCP may reimburse a responsible person from \$20,000 to \$50,000 for the replacement of private wells if DATCP or the Department of Natural Resources (DNR) orders the well replacement in response to a discharge. Further, expand reimbursement requirements to allow reimbursement for the restoration of private wells or for their connection to a public or private water source if either DATCP or DNR orders the well replacement, restoration or connection in response to a discharge. Stipulate that these provisions first apply to applications received on the effective date of the bill for costs incurred not more than 36 months before the effective date of the bill. Under current law, DATCP may provide reimbursement of up to \$20,000 for the replacement of private wells if either DATCP or DNR orders the well replacement in response to a discharge.

[Act 16 Sections: 2397e and 9304(1d)]

#### 15. LEAD ARSENATE CONTAMINATION

SEG	\$25,700
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**Governor/Legislature:** Provide \$5,500 in 2001-02 and \$20,200 in 2002-03 from the agrichemical management fund for additional staff-related costs to convert a vacant program assistant position to a senior engineering specialist position. The engineering position would track properties that have been contaminated with pesticides made with lead arsenate and prepare outreach materials for the public. DATCP data would supplement currently collected Department of Natural Resources data on remediated sites.

#### 16. WOOD TREATED WITH ARSENIC

**Joint Finance:** Require DATCP and the Department of Commerce to submit, to the Joint Committee on Finance by the fourth quarterly meeting in 2001 under s. 13.10, a comprehensive plan to phase out the purchase by any state agency, or other entity using state funds, of wood, or any product that contains wood, that is treated with arsenic, inorganic arsenic or an arsenic copper combination such as chromated copper arsenate wood preservative fungicide by December 31, 2002. Further, require that the plan include a recommendation on how to keep wood treated with arsenic, inorganic arsenic or an arsenic copper combination such as chromated copper arsenate wood preservative fungicide from being used in children's playground equipment at K-12 schools and in municipal parks.

In addition, require that the plan include whether any Wisconsin-based corporations treat wood with arsenic, inorganic arsenic or an arsenic copper combination such as chromated copper arsenate wood preservative fungicide. Further, if any Wisconsin-based corporation does treat wood in this manner, require the plan to include how much financial assistance would be needed to assist these corporations in converting their operations to use a preservative that does not contain arsenic, inorganic arsenic or an arsenic copper combination such as chromated copper arsenate wood preservative fungicide.

**Assembly:** Delete the Joint Finance provision. Instead, require DATCP and the Department of Commerce to review scientific evidence to determine whether there is a substantial likelihood that wood treated with copper, chromium and arsenic is harmful to the environment. Require the Departments to report the results of their review to the chief clerk of each house of the Legislature by June 30, 2002. Further, require the Departments to jointly promulgate rules that phase in restrictions on the use of wood treated with copper, chromium and arsenic, if the Departments determine that such wood is harmful to the environment. However, do not allow the Departments to prohibit the use of wood treated with copper, chromium and arsenic for a purpose unless there is a less harmful substitute wood preservative that may be used for that purpose. Set forfeitures at \$500 for each violation of any resulting rules promulgated by DATCP and Commerce.

**Conference Committee/Legislature:** Include the Assembly provision as modified to require DATCP and the Department of Commerce to review scientific evidence to determine whether there is a substantial likelihood that wood treated with copper, chromium and arsenic is harmful to human health or to the environment (versus only the environment under the Assembly provision). Further, require the Departments to jointly promulgate rules that phase in restrictions on the use of wood treated with copper, chromium and arsenic, if the Departments determine that such wood is harmful to human health or to the environment (versus only the environment under the Assembly provision).

In addition, require DATCP and Commerce to submit, to the Joint Committee on Finance by the fourth quarterly meeting in 2001 under s. 13.10, a comprehensive plan recommending how to keep wood treated with arsenic, inorganic arsenic or an arsenic copper combination such as chromated copper arsenate wood preservative fungicide from being used, if there is a less harmful substitute wood preservative that may be used, either at K-12 schools or in municipal parks in: (a) picnic tables; (b) park benches; or (c) children's playground equipment.

**Veto by Governor [B-2]:** Delete provisions, except the requirement that DATCP and the Department of Commerce review scientific evidence to determine whether there is a substantial likelihood that wood treated with copper, chromium and arsenic is harmful to the environment or to human health.

[Act 16 Sections: 2394p and 9104(2k)]

[Act 16 Vetoed Sections: 2394p and 9104(2k)]

## 17. INTEGRATED PEST MANAGEMENT (IPM) IN K-12 SCHOOLS

	<b>Governor (Chg. to Base)</b>		<b>Jt. Finance/Leg. (Chg. to Gov)</b>		<b>Veto (Chg. to Leg)</b>		<b>Net Change</b>	
	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>
SEG	\$239,400	1.00	\$224,400	2.00	- \$224,400	- 2.00	\$239,400	1.00



**Governor:** Provide \$118,200 in 2001-02 and \$121,200 in 2002-03 and 1.0 position from the agrichemical management fund to convert an expiring IPM specialist project position to permanent and provide additional contract funding to expand DATCP's IPM assistance program in K-12 schools. The program assists public and private school staff in the use of IPM.

**Joint Finance:** In addition to the Governor's recommendation, provide DATCP with \$136,400 and 2.0 positions in 2001-02 and \$88,000 in 2002-03 from the agrichemical management (ACM) fund for 1.0 program assistant, 1.0 environmental analysis and review specialist and funding for limited-term employees to implement a pest management program in school districts.

Require DATCP to assist school districts with all requirements under these provisions and to consult with the Department of Health and Family Services (DHFS) and the Department of Public Instruction concerning school pest management issues. Require the University of Wisconsin Board of Regents to provide, through UW-Extension, programs to train employees of school districts and other persons about using integrated pest management. Define "integrated pest management" as a comprehensive strategy of pest control with the main objective of achieving desired levels of pest control in an environmentally responsible manner to reduce or eliminate reliance on pesticides by using a combination of nonchemical pest controls, which may include monitoring, increased sanitation, physical barriers and the use of natural pest enemies, to address conditions that support pests and judiciously using lowest risk pesticides when necessary after all other methods have failed. Further, require that the training include information about the development and implementation of pest management plans to prevent unacceptable levels of pest activity and damage in schools and on school grounds while minimizing hazards to persons, property and the environment. Require UW-Extension and state Cooperative Educational Service Agencies to cooperate in providing the training.

Require school boards to propose a pest management plan, after obtaining the training outlined above, for at least one member of the school board or school district employee who will be involved in developing the pest management plan. Require the plan be designed to prevent unacceptable levels of pest activity and damage while minimizing hazards to people, property and the environment. Require that the plan include the pest management practices that will be used by the school district, including a description of: (a) the methods that will be used to identify pest problems, including monitoring to determine whether the number of pests justifies pesticide treatment; (b) the nonchemical methods that the school district will use to seek to prevent unacceptable levels of pest activity and damage; (c) the pesticides and methods of application that the school district will use if the nonchemical methods fail to prevent unacceptable levels of pest activity and damage; and (d) the means the school district will use to meet other requirements outlined below.

Require school boards to provide public notice and hold a public hearing on their proposed pest management plan, and to adopt a plan by the first day of the seventh month after the effective date of the bill that meets the requirements in (a) to (d) above. Require the plan be

submitted to DATCP by the same date. Further, require the school board to implement the plan by the first day of the thirteenth month after the effective date of the bill. School boards must notify DATCP of any modifications to the pest management plan and provide public notice and a hearing before modifying their plan.

Require school boards to authorize pesticide application in a school or on school grounds only by persons who are certified by DATCP in the applicable pesticide use category under current law. Further, require that when the use of a pesticide is determined to be necessary in a school or on school grounds, that the school board use integrated pest management practices.

Require school boards to post notice of each school pesticide application during, and for at least the 72 hours after, the application. Further, unless the school district administrator or the school principal declares that a pest emergency exists, at least 72 hours in advance of each school pesticide application, require school boards to provide written notification of the name of the pesticide to be applied, the planned time and location of the application, the potential health effects of exposure to the pesticide, as indicated on its label, and the name and telephone number of a person at the school who can be called for more information or to report health effects from exposure. The written notification would need to be sent to all school district employees or contractors and all students who may be present in the area of application within 72 hours after the application. The parents or guardians of the affected students also would receive the written notification. If a pest emergency were declared, the written notification with the actual application information would need to be sent to the same persons above, as soon as possible after the application. In all cases, require the written notice to be in a font size no smaller than routinely used for other school notices to parents.

Require school boards to maintain records for each school pesticide application that include: (a) the name and certification number of the person applying the pesticide; (b) the type of pesticide applied and its brand name; (c) the name and number of the pesticide as registered under the federal insecticide, fungicide, and rodenticide act; (d) the manufacturer of the pesticide; (e) the pesticide's active and inert ingredients; (f) the date and time of the application and the amount of pesticide applied; (g) how the pesticide was applied, including any additives used and the type of application device used; (h) the street address of the place at which the pesticide was applied and a description of the area to which the pesticide was applied; (i) the purpose of the application, including the target pest and whether the application was preventive or reactive; (j) for an outdoor application, a description of the weather conditions at the time of the application; and (k) the symptoms of acute poisoning from the pesticide, as indicated on its label. Require school boards to provide the records quarterly to DATCP, unless the school district does not use pesticides and notifies DATCP of that fact. Require that the records, if required, be made available from school boards or the Department to any person upon request. In addition, require school boards to provide any information regarding pest management that is requested by DATCP.

Prohibit school districts from using pesticide fumigation, from applying pesticides for aesthetic or cosmetic purposes and from routinely using pesticides in or around schools on a regularly scheduled basis. In addition, prohibit a school district from using pesticides around schools unless nonchemical methods of pest control have failed. Require school boards to review their liability and property insurance to determine whether coverage is adequate for damage or loss caused by pesticides.

Require DATCP and the UW Board of Regents to enter into a memorandum of understanding concerning school pest management and UW-Extension training to ensure cooperation between DATCP and UW-Extension and to avoid duplication of activities. Require DATCP, in cooperation with the UW-Extension and DHFS, to submit a report evaluating the above school pesticide program on or before January 1 of each even-numbered year to the Legislature.

**Assembly:** Delete the Joint Finance provision.

**Conference Committee/Legislature:** Include the Joint Finance provision as modified to define "integrated pest management" as a comprehensive strategy of pest control with the main objective of achieving desired levels of pest control in an environmentally responsible manner to reduce or eliminate reliance on pesticides by using a combination of nonchemical pest controls, which may include monitoring, increased sanitation, physical barriers and the use of natural pest enemies, to address conditions that support pests and judiciously using lowest risk pesticides when necessary after all other "practical" methods have failed (rather than after all other methods have failed). Further, require that a school board's pest management plan include a description of the pesticides and methods of application that the school district "may" (rather than "will" under Joint Finance provisions) use if the nonchemical methods fail to prevent unacceptable levels of pest activity and damage.

**Veto by Governor [B-3]:** Delete provisions except the allocation of \$118,200 in 2001-02 and \$121,200 in 2002-03 for 1.0 position from the agrichemical management fund to convert an expiring IPM specialist project position to permanent and for additional contract funding to expand DATCP's IPM assistance program in K-12 schools and the requirement that school boards (a) authorize pesticide application (not including germicides, sanitizers or disinfectants) in a school or on school grounds only by persons who are certified by DATCP in the applicable pesticide use category under current law, and (b) post notice of each school pesticide application during, and for at least the 72 hours after the application.

[Act 16 Sections: 426p, 582k, 1357k and 2395t]

[Act 16 Vetoes Sections: 395 (as it relates to ss. 20.115(7)(rm) and 20.285(1)(s)), 426p, 582k, 1357k and 2395t]

**18. GYPSY MOTH PROGRAM INCREASES**

SEG	\$130,200
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**Governor/Legislature:** Provide \$54,600 in 2001-02 and \$75,600 in 2002-03 from the forestry account of the conservation fund to increase LTE salaries by approximately \$2.50 per hour (to a range of \$10.00-\$11.50 per hour, costing \$33,600 annually) and to provide for 5% annual gypsy moth spray cost increases (\$21,000 in 2001-02 and \$42,000 in 2002-03). LTE trappers and lead workers are hired for approximately 12 weeks in the summer to conduct an annual male moth survey.

**19. PLANT INSPECTION**

PR	\$21,200
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**Governor/Legislature:** Provide \$5,700 in 2001-02 and \$15,500 in 2002-03 for additional staff-related costs to transfer a vacant producer inspector position funded by fruit and vegetable inspection fees and reimbursements to a plant pest and disease specialist position funded by nursery dealer and nursery and Christmas tree grower license fees. The plant pest and disease specialist would primarily inspect nursery stock for pest detection and control.

**20. CONSOLIDATE PLANT PROTECTION APPROPRIATIONS**

SEG	\$13,600
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**Governor:** Delete an annual SEG appropriation from the forestry account of the conservation fund for gypsy moth eradication and transfer the expenditure authority (\$1,019,200 in 2001-02 and \$1,040,200 in 2002-03) to an annual SEG appropriation from the forestry account for general plant protection (including nursery regulation, gypsy moth control and other plant pests).

**Joint Finance/Legislature:** In addition, delete the requirement that a one-cent surcharge on the sale of state-produced nursery stock be appropriated for the DATCP gypsy moth eradication effort. Delete the associated DATCP continuing appropriation (\$213,200 annually) and instead provide \$220,000 annually from the forestry account to DATCP's annual SEG appropriation for general plant protection.

[Act 16 Sections: 424, 424m and 425]

**21. FEDERAL GRANT LEVELS [LFB Paper 206]**

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
FED	\$1,408,800	- \$441,000	\$967,800
PR	<u>480,000</u>	<u>0</u>	<u>480,000</u>
Total	\$1,888,800	- \$441,000	\$1,447,800

**Governor:** Provide increased spending authority of \$704,400 FED and \$240,000 PR annually to reflect expected federal grant levels in the biennium. The increased spending

authority includes annual FED of \$268,300 for food inspections and trade regulations, \$36,100 for marketing agricultural services and \$400,000 for plant industry services provided by the Department. In addition, the requested increase in spending authority of \$240,000 PR annually is based on expected federal Environmental Protection Agency funding received through a Wisconsin Department of Natural Resources contract with DATCP.

**Joint Finance/Legislature:** Delete \$220,500 FED annually to reflect the estimated amount received directly from the Environmental Protection Agency for pesticide related activities (mainly salaries and associated costs of 6.5 positions).

## 22. DEBT SERVICE REESTIMATE [LFB Paper 266]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$3,708,600	- \$1,024,200	\$2,684,400

**Governor:** Reestimate debt service on DATCP general obligation bonds by \$962,700 in 2001-02 and \$2,745,900 in 2002-03 for the following purposes: (a) soil and water resource management (\$123,700 in 2001-02 and \$299,000 in 2002-03); (b) conservation reserve enhancement program (CREP) (\$821,400 in 2001-02 and \$2,429,400 in 2002-03); and (c) facilities maintenance (\$17,600 in 2001-02 and \$17,500 in 2002-03).

**Joint Finance/Legislature:** Further reestimate debt service by deleting \$752,400 GPR in 2001-02 and \$271,800 in 2002-03.

## 23. CONSOLIDATE NONAGENCY LABORATORY APPROPRIATIONS

**Governor/Legislature:** Delete a continuing PR appropriation related to milk standards and transfer the expenditure authority (\$382,700 annually) to a central administrative services general laboratory services (from nonstate agencies) continuing PR appropriation. Further, transfer the unencumbered balance from the milk standards appropriation to the central administrative services general laboratory services continuing PR appropriation.

[Act 16 Sections: 431, 433 and 9204(9)]

## 24. CONSOLIDATE GIFTS AND GRANTS APPROPRIATIONS

**Governor/Legislature:** Delete four continuing PR appropriations for gifts and grants related to: (a) animal health; (b) marketing; (c) agriculture investment aids; and (d) agricultural resource management, and transfer the expenditure authority (\$25,000 annually) to a central administrative services gifts and grants continuing PR appropriation. Further, transfer the

unencumbered balance from each of these appropriations to the central administrative services gifts and grants continuing PR appropriation.

[Act 16 Sections: 409, 416, 420, 423, 430, 2392 and 9204(3),(4),(5)&(6)]

## 25. CONSOLIDATE STATE SERVICES APPROPRIATIONS

**Governor/Legislature:** Delete two continuing PR appropriations for services provided to other agencies related to animal health contractual services and general laboratory services and transfer the expenditure authority (\$40,100 annually) to a central administrative services state contractual services continuing PR appropriation. Further, transfer the unencumbered balance from each of the appropriations to the central administrative services state contractual services continuing PR appropriation.

[Act 16 Sections: 413, 436 thru 438 and 9204(7)&(8)]

## 26. CONVERT PROGRAM REVENUE APPROPRIATIONS TO CONTINUING [LFB Paper 207]

PR	- \$202,400
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**Governor:** Change the following PR appropriations (with annual appropriation amounts) from annual to continuing: (a) food and trade regulation related services (\$25,500); (b) public warehouse regulation (\$91,800); (c) food safety and consumer protection informational materials, sale of supplies (\$32,000); (d) animal health, sale of supplies (\$30,300); (e) dog license, rabies control and related services (\$123,400); (f) "Something Special from Wisconsin" promotion (\$30,500); (g) enforcement cost recovery (\$25,000); and (h) central administrative services fees (\$201,200). An agency may not expend beyond the amounts listed in the appropriation without legislative approval (either through legislation or action of the Joint Committee on Finance) for an annual appropriation. An agency may expend any funds available in a continuing appropriation subject only to the review of DOA.

**Joint Finance/Legislature:** Delete provision. Further, reduce spending authority by \$101,200 annually for the central administrative services fees appropriation to more closely estimate anticipated expenditures.

## 27. TRANSFER POSITIONS TO CENTRAL ADMINISTRATIVE STAFF

**Governor/Legislature:** Transfer 2.0 positions from the agricultural resource management program (a vacant position and a budget and policy analyst position) with related funding of \$103,900 GPR annually to central administrative services. Further, transfer 1.0 automobile repair regulation attorney with related funding of \$128,300 GPR annually from the trade and consumer protection program to central administrative services.

## Trade and Consumer Protection

### 1. CONSUMER PROTECTION STAFF FROM DEPARTMENT OF JUSTICE [LFB Paper 215]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR	\$1,617,400	9.30	-\$1,617,400	- 9.30	\$0	0.00

**Governor:** Transfer \$808,700 annually and 9.3 consumer protection positions from the Department of Justice (DOJ) to DATCP on the effective date of the bill for consumer protection legal services. The transferred positions include 4.8 attorneys, 2.0 consumer protection investigators, 1.0 legal secretary, 1.0 paralegal and 0.5 legal assistant. Further, transfer related authority as summarized below.

Require DATCP (instead of DOJ) to be the state agency that brings an action in the name of the state to enjoin any corporation, or limited liability company from doing business in this state and to cancel or revoke a certificate of authority, incorporation or organization for violating any unfair trade practices order. Require DATCP (instead of DOJ) to be the state agency, in addition to district attorneys, empowered to seek court-ordered forfeitures for violations of the self-service storage facilities laws. Further, authorize (rather than require under current law) DOJ to furnish all legal services relating to the enforcement of various consumer protection provisions upon DATCP request.

**Joint Finance:** Delete provision.

**Senate:** Delete \$1,589,500 GPR and 28.25 GPR consumer protection positions from DATCP in each fiscal year (0.45 division administrator, 0.30 budget policy supervisor, 0.50 communications specialist, 0.75 bureau director, 9.65 consumer protection investigators, 3.0 investigator supervisors, 5.65 consumer specialists, 0.5 legal secretary, 0.8 program and policy analyst and 6.65 program assistants).

In addition, transfer \$1,059,800 GPR and 15.5 GPR consumer protection positions from DATCP to the Department of Justice (DOJ) in each fiscal year (2.0 attorneys, 1.0 consumer complaint supervisor, 4.0 consumer protection investigators, 1.0 investigator supervisor, 5.5 consumer specialists and 2.0 program assistants).

Transfer DATCP's authority and related administrative rules of the following statutory sections to DOJ:

100.15	Regulation of trading stamps
100.16	Selling with pretense of prize; in-pack chance promotion exception
100.17	Guessing contests
100.171	Prize notices
100.173	Ticket refunds
100.174	Mail-order sales regulated
100.175	Dating service contracts
100.177	Fitness center and weight reduction center contracts
100.18	Fraudulent representations
100.182	Fraudulent drug advertising
100.20	Methods of competition and trade practices
100.205	Motor vehicle rustproofing warranties
100.207	Telecommunications services
100.208	Unfair trade practices in telecommunications
100.209	Cable television subscriber rights
100.2095	Labeling of bedding
100.28	Sale of cleaning agents and water conditioners containing phosphorus
100.31	Unfair discrimination in drug pricing
100.37	Hazardous substances act
100.38	Antifreeze
100.41	Flammable fabrics
100.42	Product safety
100.43	Packaging standards; poison prevention
100.44	Identification and notice of replacement part manufacturer
100.46	Energy consuming products
100.50	Products containing or made with ozone-depleting substances
Chap 136	Future Service Plans
Chap 344	Vehicle Financial Responsibility
Chap 704	Landlord and Tenant
Chap 707	Timeshares
Chap 779	Liens

In addition, transfer DATCP's current authority to file court actions in all other Chapter 100 (Marketing; Trade Practices) sections to DOJ, for example in 100.201 (Unfair Trade Practices in the Dairy Industry), 100.22 (Discrimination in the Purchase of Milk) and 100.235 (Procurement of Vegetable Crops). Further, require DOJ to represent DATCP in any court action relating to the enforcement of Chapter 100, and remove DATCP's authority to be represented by its attorneys or to appoint special counsel to prosecute or assist in the prosecution of all cases arising under Chapter 100 of the statutes, except for s. 100.206 (Music royalty collections; fair practices), s. 100.21 (Substantiation of energy savings or safety claims), s. 100.30 (Unfair sales act) and s. 100.51 (Motor fuel dealerships). In addition, DATCP would be allowed to continue to commence an action in court to recover allowed claims on behalf of vegetable producers.



Allow DOJ (rather than DATCP) to enjoin a violation of milk payment audit requirements upon DATCP request. Further, require the Department of Commerce to consult with DOJ (rather than DATCP) when establishing rules relating to quality standards for local energy resource systems. Require DATCP to consult with DOJ in developing license applications and other forms required for pawnbrokers, secondhand article dealers and secondhand jewelry dealers.

**Assembly:** Restore the Governor's provision.

**Conference Committee/Legislature:** Include the Joint Finance provision which maintains current law. (However, due to a drafting error, the act retains a provision requiring DOJ to furnish all legal services required by DATCP relating to the enforcement of the state hazardous substance act (s. 100.37) and product safety provisions under s. 100.42.)

[See "Justice" for additional information on the proposed transfer.]

[Act 16 Section: 2855]

## 2. CONSUMER PROTECTION ASSESSMENT

PR	\$200,000
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**Governor/Joint Finance:** Provide \$100,000 annually in additional spending authority funded by increasing, from 15% to 25%, a surcharge on all fines and forfeitures for violations relating to consumer protection that occur beginning on the effective date of the bill. Further, allow monies to be used for any consumer protection activity (rather than solely consumer protection information and education activities under current law), and require that revenue received from assessments that exceed \$185,000 (rather than \$85,000 under current law) in any fiscal year be deposited to the general fund.

**Senate:** In addition, require that DOJ, instead of DATCP, be awarded consumer protection assessments on all fines and forfeitures for violations under Chapter 100 of the statutes or corresponding rules or ordinances.

**Conference Committee/Legislature:** Delete Senate provision.

[Act 16 Sections: 402, 2005 thru 2012, 2422 thru 2427, 3795 thru 3801, 3817 thru 3826, 3826, 3834 and 9304(1)]

## 3. ETHANOL PRODUCER GRANT PROGRAM [LFB Paper 216]

	Governor (Chg. to Base)	Jt. Finance (Chg. to Gov)	Legislature (Chg. to JFC)	Net Change
GPR	\$3,000,000	- \$3,000,000	\$1,100,000	\$1,100,000
PR	0	0	1,900,000	1,900,000
Total	\$3,000,000	- \$3,000,000	\$3,000,000	\$3,000,000

**Governor:** Provide \$3 million in 2002-03 for grants to ethanol producers. Further, transfer the program from the Department's marketing division to its trade and consumer protection division. 1999 Act 55 created an ethanol producer grant program for annual payments of 20 cents per gallon to qualifying producers for up to 15 million gallons (\$3 million per producer maximum) of ethanol produced in a 12-month period. No funding was provided under Act 55. If appropriated funds are insufficient to pay all ethanol producer claims, payments are prorated.

**Joint Finance:** Delete \$3 million in 2002-03 for grants to ethanol producers. Require DATCP to submit its request to the Governor for the 2003-05 biennial budget bill as though the Department was appropriated \$6,000,000 GPR annually in base funding for payments to ethanol producers.

**Senate:** Delete the ethanol producer grant program created in 1999 Act 55 and the Joint Finance requirement that DATCP submit its request to the Governor for the 2003-05 biennial budget bill as though the Department was appropriated \$6,000,000 GPR annually in base funding for payments to ethanol producers.

**Assembly:** Provide \$3 million in 2002-03 from tribal gaming revenues in a new, annual appropriation for grants to ethanol producers. Further, transfer the program from DATCP's marketing division to its trade and consumer protection division. Require the unencumbered balance in the tribal gaming grants appropriation to revert to the Indian gaming receipts appropriation on June 30 of each year. Delete the Joint Finance requirement that DATCP submit its request to the Governor for the 2003-05 biennial budget bill as though the Department was appropriated \$6,000,000 GPR annually in base funding for payments to ethanol producers.

**Conference Committee/Legislature:** Include the Assembly provision as modified to provide \$1,100,000 GPR and \$1,900,000 in tribal gaming PR in 2002-03 for ethanol producer grants.

[Act 16 Sections: 403g, 415 and 880g]

#### 4. AGRICULTURAL DEVELOPMENT AND DIVERSIFICATION PROGRAM [LFB Paper 173]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
PR	\$810,000	- \$810,000	\$0

**Governor:** Create an annual appropriation and provide \$325,000 in 2001-02 and \$485,000 in 2002-03 from tribal gaming revenues to increase agricultural development and diversification (ADD) program grant funding.

Further, expand the program to allow DATCP to make grants and provide technical assistance to agricultural producers and organizations to support preliminary research and investigations on potential business enterprises that may increase the value of raw agricultural commodities. However, prohibit DATCP from providing funding for more than two years or from awarding more than \$25,000 to a single business for research and investigations. Require DATCP to promulgate rules to administer the expansion. The ADD program provides grants to farmers or other entrepreneurs to develop agricultural crops and livestock products, value-added and other new uses for existing products and new business ventures. The ADD program base budget for grants is \$400,000 GPR annually.

**Joint Finance/Legislature:** Delete provision.

## 5. TELEPHONE SOLICITATION REGULATION

**Senate/Legislature:** Provide \$230,900 annually and 5.5 positions in a new, continuing appropriation to create and maintain a telephone nonsolicitation directory. Fees would be paid through a telephone solicitor registration system.

	Funding	Positions
PR-REV	\$230,900	
PR	\$461,800	5.50

Require DATCP to promulgate rules for establishing, maintaining and semiannually updating a directory that includes listings of residential customers who do not wish to receive telephone solicitations from a telephone solicitor (a person, other than an employee or contractor of a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation). Define a nonprofit organization as a tax-exempt corporation, association or organization under 501 c (3), (4), (5) or (19) of the Internal Revenue Code. Define a telephone solicitation as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods or services or to make a contribution, donation, grant or pledge of money, credit, property or other thing of any kind or value. Define an affiliate, when used in relation to any person, to mean another person who owns or controls, is owned or controlled by, or is under common ownership or control with such person, but is not a current client of such a person. Require DATCP by rule to establish requirements and procedures for a residential customer (not including an individual that is known to operate a business at his or her residence) to request a listing in the directory including notification to the Department on a biennial basis if the residential customer wishes to continue to be included in the directory. Require DATCP to delete a residential customer from the directory if the customer does not make the biennial notification.

Except for copies of the nonsolicitation directory that are provided to registered telephone solicitors, exempt the nonsolicitation directory from inspection, copying, or receipt requirements under the open records law and prohibit DATCP from releasing the records. Require DATCP to make the nonsolicitation directory available on a semiannual basis by electronic transmission only to registered telephone solicitors. Further, require DATCP to provide a printed copy of the nonsolicitation directory to a registered telephone solicitor upon

request. Prohibit a telephone solicitor from soliciting or accepting from any person, directly or indirectly, anything of value in exchange for providing the person with any information included in the nonsolicitation directory.

Require DATCP to promulgate rules that require any telephone solicitor who requires an employee or contractor to make a telephone solicitation to a Wisconsin residential customer to register, obtain a registration number and pay a registration fee to the Department. Provide that the amount of the registration fee be based on the cost of establishing the nonsolicitation directory and that an individual telephone solicitor be required to pay an amount based on the number of telephone lines used to make telephone solicitations. Further, require that the rules require a telephone solicitor that registers with the Department to pay an annual registration renewal fee based on the cost of maintaining the nonsolicitation directory.

In addition, require DATCP to promulgate rules that require an individual who makes a solicitation on behalf of a telephone solicitor to identify at the beginning of the telephone conversation the telephone solicitor, and if different than the solicitor, the person selling the property, goods, or services, or receiving the contribution, donation, grant, or pledge of money, credit, property, or other thing of any kind, that is the reason for the telephone solicitation.

Unless a telephone solicitation is made in response to the recipient's express written request for the solicitation or is made to a recipient who is a current client (not including a recipient who is a current client of an affiliate of such a person, but is not a current client of such a person) of the person selling the item or requesting the contribution that is the reason for the telephone solicitation, prohibit a telephone solicitor or their employee or contractor from making a telephone solicitation to a residential customer if the nonsolicitation directory includes a listing for the residential customer or from making a telephone solicitation to a nonresidential customer if the nonresidential customer has provided notice by mail to the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations. In addition, specify that telephone solicitors (or their contractors) be prohibited from using an electronically prerecorded message without the consent of the recipient of the telephone call (rather than without the consent of the person called as under current law). Further, prohibit a telephone solicitor from requiring an employee or contractor to make a telephone solicitation in violation of these requirements or to make a telephone solicitation to a person in Wisconsin unless the telephone solicitor is registered with the Department. Upon request by a nonresidential customer, require a telephone solicitor, their employee or contractor, to provide the mailing address for notifying the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations. Set forfeitures of between \$1,000 to \$10,000 for each violation by a telephone solicitor of the prohibitions and requirements of this paragraph.

Unless a telephone solicitation is made in response to the recipient's express written request for the solicitation or is made to a recipient who is a current client (not including a recipient who is a current client of an affiliate of such a person, but is not a current client of such a person) of the person selling the item or requesting the contribution that is the reason for the

telephone solicitation, prohibit a nonprofit organization or its employee or contractor from making a telephone solicitation to a residential customer if the residential customer has provided notice by telephone, fax or mail to the nonprofit organization that the residential customer does not wish to receive telephone solicitations. Further, prohibit a nonprofit organization from requiring an employee or contractor to make a telephone solicitation in violation of these requirements. Set forfeitures of between \$1,000 to \$10,000 for each violation by a telephone solicitor of the prohibitions and requirements of this paragraph.

Specify that the above requirements apply to any telephone solicitation received by a person in Wisconsin. Require DATCP to investigate violations and bring an action for temporary or permanent injunctive or other relief for violations. Unless otherwise noted, set forfeitures of between \$100 to \$500 for each violation of the above provisions. Require that if the violator knows the customer called in violation is an elderly or disabled person, or if the violation causes economic, emotional or physical damage to one of these persons, a supplemental forfeiture of up to \$10,000 be assessed. Further, allow private persons to bring an action against violators of these provisions to recover damages.

**Veto by Governor [B-1]:** Delete the language, in the definition of a "telephone solicitation," which includes the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to make a contribution, donation, grant or pledge of money, credit, property or other thing of any kind or value. In addition, remove all other references from the bill relating to soliciting a contribution, donation, grant or pledge of money, credit, property or other thing of any kind or value, except the act continues to require DATCP to promulgate rules that require an individual who makes a solicitation on behalf of a telephone solicitor to identify at the beginning of the telephone conversation the telephone solicitor, and if different than the solicitor, the person selling the property, goods, or services, or receiving the contribution, donation, grant, or pledge of money, credit, property, or other thing of any kind, that is the reason for the telephone solicitation.

Allow a telephone solicitor or their employee or contractor to make a telephone solicitation to a residential customer if the nonsolicitation directory includes a listing for the residential customer or to make a telephone solicitation to a nonresidential customer if the nonresidential customer has provided notice by mail to the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations, if the solicitation (a) is made in response to the recipient's request (instead of only an "express written request" as under the enrolled bill) for the solicitation or (b) is made to a recipient who is a current client (not including a recipient who is a current client of an "affiliate" of such a person) of the person selling the item or requesting the contribution that is the reason for the telephone solicitation. Further, delete the statutory definition of an "affiliate", which the Governor in his veto message requests DATCP to define in administrative rule after consulting with the Legislature, consumer groups and businesses.

Delete the definition of a nonprofit organization and the prohibition of a nonprofit organization or its employee or contractor from making a telephone solicitation to a residential

customer if the residential customer has provided notice by telephone, fax or mail to the nonprofit organization that the residential customer does not wish to receive telephone solicitations. Further, delete the prohibition of a nonprofit organization from requiring an employee or contractor to make a telephone solicitation in violation of these requirements and delete the forfeitures of between \$1,000 to \$10,000 for each violation by a telephone solicitor of the prohibitions and requirements of this paragraph. As a result, no nonprofit organization or an employee or contractor of a nonprofit organization would be subject to any new requirements related to telephone solicitations.

Change the forfeiture amount from between \$1,000 to \$10,000 to a forfeiture not to exceed \$100 for each violation by a telephone solicitor of the following prohibitions and requirements: (a) unless a telephone solicitation is made in response to the recipient's express written request for the solicitation or is made to a recipient who is a current client (not including a recipient who is a current client of an affiliate of such a person, but is not a current client of such a person) of the person selling the item or requesting the contribution that is the reason for the telephone solicitation, prohibit a telephone solicitor or their employee or contractor from making a telephone solicitation to a residential customer if the nonsolicitation directory includes a listing for the residential customer or from making a telephone solicitation to a nonresidential customer if the nonresidential customer has provided notice by mail to the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations; (b) prohibit telephone solicitors (or their contractors) from using an electronically prerecorded message without the consent of the recipient of the telephone call; (c) prohibit a telephone solicitor from requiring an employee or contractor to make a telephone solicitation in violation of these requirements or to make a telephone solicitation to a person in Wisconsin unless the telephone solicitor is registered with the Department; and (d) upon request by a nonresidential customer, require a telephone solicitor, their employee or contractor, to provide the mailing address for notifying the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations.

Change the forfeiture amount from between \$100 to \$500 to allow a forfeiture of \$100 for each violation of the act's provisions (other than those noted above) related to telephone solicitation requirements. Further, delete the supplemental forfeiture provision regarding violations toward elderly or disabled persons and delete the provision that would have allowed private persons to bring an action against violators of the act's provisions related to telephone solicitation requirements to recover damages.

[Act 16 Sections: 434m, 2429d, 2435 thru 2446f, 2818 thru 2826 and 9104(4q)]

[Act 16 Vetoes Sections: 2429d, 2437b, 2439b, 2443b, 2444b, 2446b, 2446f and 2819b]

## 6. FEDERAL AGRICULTURAL POLICY REFORM [LFB Paper 217]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$100,000	- \$100,000	\$0

**Governor:** Provide \$50,000 each year in a biennial appropriation to provide assistance to organizations to seek federal agricultural policy reform. Prohibit funds from being encumbered after June 30, 2005. This provision extends and expands funding that was authorized on a one-time basis in both the 1997-99 and 1999-01 budgets for federal dairy policy reform.

**Joint Finance:** Delete \$50,000 annually and the biennial appropriation. Instead, require DATCP to provide at least \$50,000 each year from the Department's existing marketing general operations GPR appropriation to seek federal agricultural policy reform and sunset the requirement on June 30, 2005.

**Assembly/Legislature:** Include the Joint Finance provision as modified to require DATCP to provide the \$50,000 annually from any of the Department's appropriations.

[Act 16 Section: 2383]

## 7. WEIGHTS AND MEASURES STAFF FUNDING [LFB Paper 218]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
PR	-\$381,800	- 3.00	\$184,000	1.00	-\$197,800	- 2.00
SEG	381,800	3.00	-\$184,000	- 1.00	197,800	2.00
Total	\$0	0.00	\$0	0.00	\$0	0.00

**Governor:** Transfer 3.0 weights and measures inspector positions and \$190,900 annually from PR to petroleum inspection fund SEG. Petroleum inspection fund revenues come from a 3¢ per gallon fee on petroleum products entering the state.

**Joint Finance/Legislature:** Restore 1.0 position and \$92,000 annually to PR rather than converting the positions to petroleum inspection fund SEG to fund all non-contract and half of municipal contract inspection costs related to petroleum from SEG.

## 8. FISH HEALTH CERTIFICATE TRAINING

**Governor/Legislature:** Provide \$45,000 each year in a continuing appropriation for training to veterinarians and others who issue fish

PR-REV	\$90,000
PR	\$90,000

health certificates. Allow DATCP to charge fees to recover the cost of training. Under DATCP rule, beginning in 2002, fish farms are required to have fish health certifications in order to move fish.

[Act 16 Sections: 408 and 2399]

## 9. JOHNE'S DISEASE TESTING SUBSIDY

	Assembly/Leg. (Chg. to Base)	Veto (Chg. to Leg)	Net Change
GPR	\$800,000	- \$500,000	\$300,000

**Assembly/Legislature:** Provide an additional \$400,000 annually for financial assistance to owners of livestock herds for conducting testing for paratuberculosis (Johne's disease). Under current law, \$100,000 GPR annually is provided.

**Veto by Governor [B-5]:** Delete \$250,000 annually by deleting the \$500,000 annual amount in the schedule and writing in the lower amount (\$250,000 annually).

[Act 16 Vetoes Section: 395 (as it relates to s. 20.115(2)(c))]

## 10. JOHNE'S PROGRAM POSITION [LFB Paper 219]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$0	- \$14,500	- \$14,500

**Governor:** Convert 1.0 GPR agricultural resource management administrative support assistant position to a senior veterinarian specialist position to staff the Johne's disease control program. The position would respond to herd owner and veterinarians, review laboratory test results, issue certifications and provide on-farm review of disease control plan effectiveness. The Department estimates 2.85 positions (outside of laboratory work which is conducted by the Veterinary Diagnostic Laboratory) are currently working on the Johne's program.

**Joint Finance/Legislature:** Convert associated funding of \$27,600 GPR in 2001-02 and \$42,100 GPR in 2002-03 from the deleted administrative support assistant position to the senior veterinarian specialist position. Delete the remaining \$14,500 GPR in 2001-02 related to the deleted position.



## **11. PENALTIES FOR THE INTRODUCTION OF CONTAGIOUS DISEASE INTO LIVESTOCK**

**Assembly/Legislature:** Provide that whoever intentionally introduces a contagious or infectious disease into livestock (defined as cattle, horses, swine, sheep, goats, farm-raised deer and other animals used or to be used in the production of food, fiber or other commercial products) without the consent of the livestock owner would be guilty of a Class C felony (up to 10 years imprisonment and 15 years with extended supervision). Provide that whoever intentionally introduces a contagious or infectious disease into wild deer without the consent of the Department of Natural Resources is also guilty of a Class C felony. Include the violations as racketeering crimes under s. 946.82 of the statutes. Provide that a person has a cause of action against the violator if the person suffers damage or loss from the intentional introduction of a contagious disease into livestock. However, specify that if the person also has the same cause of action against the violator under the statutes governing the implied warranty in the sale of animals, that the cause of action only be brought under those statutes (s. 95.195).

[Act 16 Sections: 3871t, 3871w, 3951n and 3966r]

## **12. PENALTIES FOR THE DESTRUCTION OF COMMERCIALY GROWN PLANTS**

**Assembly/Legislature:** Provide that whoever intentionally causes damage to any person's plant (including material taken, extracted or harvested from a plant, or a seed or other plant material used to grow or develop a plant) without the person's consent, is guilty of a Class E felony (up to two years imprisonment and five years with extended supervision) if the plant is or was being grown as feed for animals being used or to be used for commercial purposes, for other commercial purposes, or in conjunction with plant research and development at any local, state or federal government agency, a university or a private research facility. Include the violation as a racketeering crime under s. 946.82 of the statutes. Further, allow the court to award the reasonable attorney fees incurred in litigating the action and to include as damages recoverable, the market value of the plant and the cost of production, research, testing, replacement and plant development directly related to the plant that was damaged or destroyed.

[Act 16 Sections: 3871u, 3938up and 3966r]

## **13. CUSTOM SERVICE SLAUGHTERING**

**Assembly:** Specify that a person who slaughters animals as a custom service for the owner and who is not involved with the sale of the meat, is exempt from state meat inspection requirements. Further, allow the slaughter of animals for sale or the sale of animals or poultry without inspection if the sale is by the person who raised the animals or poultry to an individual and is not for resale. Under current law, a person who slaughters animals as a custom service for the owner exclusively for use by the owner and members of the owner's

household and the owner's nonpaying guests and employees, is exempt from state meat inspection requirements.

**Conference Committee/Legislature:** Delete provision.

#### 14. REPEAL MINK FARM TAX AND RESEARCH

PR-REV	- \$2,400
PR	- \$12,000

**Governor/Legislature:** Delete a mink research assessment appropriation of \$6,000 each year and repeal the annual occupational tax of \$25 for each domestic mink farm, along with the requirement that DATCP use the funds to promote research in the breeding and raising of domestic mink.

[Act 16 Sections: 411, 2115, 2208, 2211, 2212, 2216, 2217 and 2398]

#### 15. DOG LICENSE FEES AND PET REGULATIONS

	<b>Jt. Finance/Leg. (Chg. to Base)</b>		<b>Veto (Chg. to Leg)</b>		<b>Net Change</b>	
	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>
PR-REV	\$614,600		- \$614,600		\$0	
PR	\$406,600	7.00	- \$406,600	- 7.00	\$0	0.00

**Joint Finance:** Provide \$135,500 in 2001-02 and \$271,100 in 2002-03 in a program revenue continuing appropriation for 5.0 animal health inspectors, 1.0 animal health consultant supervisor and 1.0 program assistant to inspect pet dealers, pet breeders, animal shelters and kennels.

Increase the minimum dog license tax from \$3 to \$4.50 for a neutered male or spayed female and from \$8 to \$10 for an unspayed or unneutered dog. Allow persons who keep more than one dog (rather than only persons who keep dogs for breeding, sale or sporting) to apply for a multiple dog license. Increase the multiple dog license tax from \$35 to \$45.50 for 12 or fewer dogs and increase from \$3 to \$4.50 the amount required for each dog in excess of 12. Allow a dog owner or keeper to transfer a multiple dog license tag from a dog that is no longer owned or kept to another dog, only if the other dog is currently immunized against rabies. Further, require the county treasurer to pay \$1 for each license issued for a neutered or spayed dog, \$1.50 for each license issued for an unneutered or unspayed dog, \$10 for each multiple dog license issued and \$1 for each dog in excess of 12 for which a multiple dog license is issued to the state (rather than 5% of the total current law minimum tax amount).

Specify that any city, village or town treasurer or other tax collecting official, or any person deputized by the treasurer or tax collecting official, may collect the license fees, unless an ordinance or resolution appoints a different person. Further, allow veterinarians and humane societies to voluntarily become collecting officials if authorized by the governing body

of a city, village or town by resolution or ordinance. If a collecting official is not the town, village or city treasurer or other deputized tax collecting officer, require the collecting official to provide a copy of each license issued to the town, village or city treasurer or other deputized tax collecting officer. Further, increase the allowance to be retained by a collecting official from 25¢ to 75¢ for each license issued. Specify that a copy of a currently required list of all dogs in the district subject to tax, to whom they are assessed, the name, number, sex, spayed or unspayed, neutered or unneutered, breed and color of each dog be sent to the town, village or city treasurer or other deputized tax collecting officer.

Require DATCP to appoint an advisory committee represented by a variety of interests related to animals, in order to advise the Department on rules promulgated under the following provisions. The effective date of the following provisions would be the first day of the 30<sup>th</sup> month beginning after publication.

Convert the dog license, rabies control and related services PR annual appropriation to continuing, and include revenues from proposed pet dealer, pet breeder, animal shelter and kennel licenses. Require DATCP to promulgate rules specifying fees for these licenses and provide that the fees are not refundable if DATCP denies the license. Further, require these nontransferable licenses to expire on October 31 of each even-numbered year. Before issuing an initial license, and at least once during each biennial licensing period thereafter, require DATCP to inspect each licensed location and allow DATCP, at any reasonable time, to enter and inspect any facility at which a person is required to have a license.

Prohibit a person from operating an animal shelter without a DATCP license for each separate location at which an animal shelter is operated, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection. Define an animal shelter as either: (a) a facility that is used to impound or harbor at least 25 seized, stray, abandoned, or unwanted dogs, cats or other animals in a year and that is operated by the state, a political subdivision or a veterinarian licensed by the Veterinary Examining Board; or (b) a facility that is operated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, that is used to shelter at least 25 animals in a year, and that is operated by a humane society, an animal welfare society or a nonprofit association.

Prohibit a person from operating a kennel without a DATCP license for each separate location at which a kennel is operated, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection. Define a kennel as a facility where dogs or cats are kept for 24 hours or more for boarding, training or similar purposes for compensation, except a kennel would not include an animal shelter or a facility owned or operated by a licensed veterinarian solely for the provision of veterinary care.

Prohibit a pet dealer (a person who sells, or offers to sell at retail, exchanges, or offers for adoption at least 25 mammals, other than cattle, horses, swine, sheep, goats, deer, llamas and related species, including game species, as pets in a year) from operating without a DATCP

license for each separate location at which they conduct such business, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection. Further, prohibit a pet breeder (one who sells at least 25 dogs or cats for resale as pets in a year, except a breeder does not include a pet dealer) from operating without a DATCP license for each separate location at which they conduct such business, unless the Department issues an interim permit that authorizes operation until DATCP can make an initial inspection.

Allow DATCP to promulgate rules specifying minimum standards for animal shelter and kennel facilities and facilities at which pet dealers and pet breeders operate, and specifying any of the following for persons required to obtain an animal shelter, kennel, pet dealer or pet breeder license: (a) minimum requirements for humane care; (b) requirements relating to the transportation of animals; (c) grounds for license revocation; (d) grounds for DATCP to issue orders prohibiting the selling or moving of an animal; (e) minimum ages for the sale of animals; (f) reinspection fees to be charged when a DATCP inspection reveals conditions that require correction and reinspection; (g) requirements for record keeping; and (h) requirements relating to space and opportunity for exercise to be provided to animals.

Establish penalties for persons required to obtain an animal shelter, kennel, pet dealer or pet breeder license. Provide that a person who operates without a required license may be fined not more than \$10,000 or imprisoned for not more than nine months, or both. For other violations of these provisions or rules promulgated under these provisions, a person may be required to forfeit not more than \$1,000 for the first offense and between \$200 and \$2,000 for the second or any subsequent offense within five years; if the violation involves the keeping of animals, each animal to which a violation occurred would constitute a separate violation.

**Senate:** Delete provision.

**Conference Committee/Legislature:** Restore provision.

**Veto by Governor [B-4]:** Delete \$135,500 in 2001-02 and \$271,100 in 2002-03 along with 5.0 animal health inspectors, 1.0 animal health consultant supervisor and 1.0 program assistant positions that would have inspected pet dealers, pet breeders, animal shelters and kennels.

Delete the provisions that would have increased minimum individual and multiple dog license taxes. Delete provisions that would have required the county treasurer to pay \$1 for each license issued for a neutered or spayed dog, \$1.50 for each license issued for an unneutered or unspayed dog, \$10 for each multiple dog license issued and \$1 for each dog in excess of 12 for which a multiple dog license is issued to the state (maintain the current law minimum tax amount at 5% of the total). Further, maintain the allowance retained by a collecting official at 25¢ rather than 75¢ for each license issued.

Delete the penalties for persons required to obtain an animal shelter, kennel, pet dealer or pet breeder license and for other violations of pet regulation and inspection provisions or rules promulgated under these provisions. Due to the veto of the specific penalties provided by the

Legislature, the penalty is set at the general forfeiture level provided in the statutes of not more than \$200.

Act 16 retains the provisions for new inspection and licensing requirements and authorizing DATCP rules to establish related fees and standards for pet dealers, pet breeders, animal shelters and kennels that become effective February 1, 2004. The act also includes the dog license tax collecting changes regarding collection officials.

[Act 16 Sections: 412b, 2881b thru 2881j, 9104(3k) and 9404(4k)]

[Act 16 Vetoed Sections: 395 (as it relates to s. 20.115 2(j)), 2881b, 2881d, 2881e, 2881k and 2881L]

## **16. EXCLUDE MOTOR VEHICLE FUEL FROM UNFAIR SALES ACT PROVISIONS**

**Senate:** Specifically exclude motor vehicle fuel sales from the unfair sales act (minimum mark-up and loss leader) provisions of the statutes. Further, allow motor vehicle fuel to be exempt from determining sales below cost or being subject to minimum markup requirements when sold in combination with or on condition of the purchase of any other items. Allow the sale of motor vehicle fuel at less than cost for any reason (including to induce the purchase of other merchandise or to divert trade from a competitor).

Under current law, the unfair sales act requires wholesalers and retailers of motor vehicle fuel to sell fuel for a certain percentage above their cost to obtain the fuel. The law also prohibits the sale of most items at less than cost in order to induce the purchase of other merchandise or to divert trade unfairly from a competitor.

**Conference Committee/Legislature:** Delete provision.

## **17. TOBACCO PRODUCT MINIMUM MARK-UP VIOLATIONS**

**Senate/Legislature:** Allow a person who is injured or threatened with injury as a result of a sale or purchase of cigarettes or other tobacco products in violation of the minimum mark-up law to bring an action against the violator for either (a) temporary or permanent injunctive relief; or (b) three times the amount of any monetary loss sustained or an amount equal to \$2,000, whichever is greater, multiplied by each day of continued violation, together with costs, including accounting fees and reasonable attorney fees. Further, allow an association of cigarette wholesalers to bring an action on behalf of the person who is injured or threatened with injury as a result of a sale or purchase of cigarettes or other tobacco products in violation of the minimum mark-up law.

**Veto by Governor [B-7]:** Delete the provision that would have allowed an association of cigarette wholesalers to bring an action on behalf of a person who is injured or threatened with

injury as a result of a sale or purchase of cigarettes or other tobacco products in violation of the minimum mark-up law.

[Act 16 Section: 2430L]

[Act 16 Vetoed Section: 2430L]

## 18. TRADE AND CONSUMER PROTECTION POSITIONS

**Governor/Legislature:** Transfer 0.35 positions and \$28,500 annually from PR to petroleum inspection fund SEG, and make other adjustments to realign trade and consumer protection staff. Further, delete \$100 PR annually related to the adjustments. The positions and funding affected are as follows:

Funding Positions		
PR	- \$57,200	- 0.35
SEG	57,000	0.35
Total	- \$200	0.00

<u>Appropriation</u>	<u>Positions</u>	<u>Annual Funding</u>
Warehouse keeper and grain dealer regulation	0.03	\$3,100
Dairy and vegetable security and trade practices	- 0.40	- 31,600
Public warehouse regulation	0.02	- 100
Unfair sales act enforcement	0.35	28,500
TOTAL	0.00	- \$100

## 19. CONSOLIDATE MARKETING APPROPRIATIONS

**Governor/Legislature:** Delete an annual GPR appropriation for export promotion and transfer the funding (\$340,300 annually) to the annual marketing general program operations GPR appropriation.

[Act 16 Section: 414]

## 20. ELIMINATE COUNTY AND DISTRICT FAIR REPORT REQUIREMENT

**Governor/Legislature:** Delete the requirement that DATCP submit to the Governor a statement showing receipts and disbursements of each fair receiving state aid, the premiums paid and the amount of state aid claimed and allowed. Under current law, DATCP provides county and district fair aids in an amount equal to 95% of the first \$8,000 actually paid in net premiums and 70% of all net premiums that exceed \$8,000, up to a \$15,000 maximum amount, if available.

[Act 16 Section: 2390]

## 21. ELIMINATE FARMS FOR THE FUTURE FUND

GPR-REV

\$100

**Governor/Legislature:** Eliminate the segregated farms for the future fund. The fund was created in 1991 to accept federal funds for the protection or preservation of farmland for agricultural purposes, and the initial state deposit of \$50 dollars has not changed. The balance of the fund would lapse to the general fund.

[Act 16 Sections: 1107, 1124 and 2393]

## 22. FOOD ADVISORY COUNCIL

**Joint Finance/Legislature:** Create a food advisory council in DATCP for the purpose of focusing on issues relating to providing a safe and wholesome food supply in Wisconsin, including the following: (a) food recalls; (b) the Wisconsin food code; (c) food safety concerns and communications; (d) training; (e) Department and food industry partnerships; (f) enforcement and inspection; and (g) other issues related to the food industry.

Require the Council to meet at least quarterly and that the Council consist of DATCP Secretary appointees including DATCP staff and representatives of: (a) consumers; (b) retail and wholesale grocers; (c) academic institutions; (d) the federal Department of Health and Human Services; and (e) the food industry or food industry associations.

**Veto by Governor [B-8]:** Delete provision.

[Act 16 Vetoes Sections: 168e and 2403e]

## 23. LANDLORD TENANT CARPET CLEANING REQUIREMENTS

**Assembly:** Allow a landlord to deduct from a tenant's security deposit at the end of the tenancy for carpet cleaning costs incurred by the landlord due to normal wear and tear of the carpet if: (a) the landlord provided the tenant with a written document separate from the lease entitled "Nonstandard Rental Provisions" regarding the deduction for carpet cleaning costs; (b) the tenancy was entered into on or after the first day of the 13<sup>th</sup> month after passage of the bill; and (c) the landlord meets conditions specified by DATCP rule. Require DATCP to submit a proposed rule specifying conditions that must be met in order for a landlord to deduct from a security deposit for such carpet cleaning, to the Legislative Council by the first day of the 7<sup>th</sup> month after passage of the bill.

**Conference Committee/Legislature:** Delete provision.

## 24. AGRICULTURAL CREDIT TRANSACTIONS

**Assembly:** Require a farm creditor (a person who lends money for agricultural purposes) to ensure that a document signed by a borrower of \$20,000 or more primarily for an agricultural purpose is executed in duplicate original copies. The farm creditor must provide the borrower with a duplicate original copy. Allow DATCP to authorize by rule any method of producing duplicate original copies that is at least as effective as a carbon or an identical carbonless reproduction that contains the impression of all signatures on the signed copy.

**Conference Committee/Legislature:** Delete provision.

## 25. AGRICULTURAL PRODUCER SECURITY PROGRAM

[Note: This item was included by the Governor in his budget recommendations but deleted by the Joint Committee as non-fiscal policy.]

Funding Positions		
PR-REV	- \$1,338,700	
SEG-REV	4,923,000	
PR	\$1,416,600	- 12.12
SEG	<u>6,116,600</u>	<u>12.12</u>
Total	\$4,700,000	0.00

**Assembly/Legislature:** Create an agricultural producer security program. Delete \$588,100 PR and provide \$2,938,100 SEG in 2001-02, delete \$828,500 PR and provide \$3,178,500 SEG in 2002-03 and convert 12.12 PR positions to SEG to consolidate current individual vegetable processor, dairy plant operator, grain dealer and warehouse keeper programs. Further, convert security requirements from the consolidated program to an insurance pool funded by industry assessments that would be deposited into a new SEG agricultural producer security (APS) fund. Specify that the APS fund is a public trust to be administered to secure payments to producers and only used for the agricultural producer security program. The APS fund would consist of all fees, surcharges, assessments, reimbursements and proceeds of surety bonds received by DATCP for the APS program. Require DATCP to keep a record by contractor and industry of all fund deposits. Give the Wisconsin Investment Board exclusive control of the investment and collection of the principal and interest of all monies loaned or invested from the APS fund. Unless otherwise noted, the effective date of these provisions would be January 1, 2002.

**Appropriations and Positions.** Convert funding for 7.72 PR dairy vegetable security and trade practice positions and 4.9 PR warehouse keeper and grain dealer regulation positions to a 0.5 PR grain inspection and certification funded position and 12.12 SEG dairy, grain and vegetable security positions (\$458,300 in 2001-02 and \$655,800 in 2002-03 for salary and fringe benefits) funded from the APS fund in a new, annual SEG appropriation. Provide, from the APS fund, a sum sufficient SEG appropriation (estimated at \$350,000 SEG annually) to purchase industry bonds and a blanket bond used to secure payment of claims against contributing contractors. Create an additional sum sufficient SEG appropriation from the APS fund (estimated at \$2,000,000 annually) to make default claim payments, up to a deductible amount, to producers. Further, create a continuing SEG appropriation from the APS fund to deposit bond proceeds earned from making a demand against the appropriate industry bond (and the blanket bond, if necessary) and to use the bond proceeds to make any default payments above



the deductible amount to producers.

Decrease program revenue-earned estimates by \$1,035,700 to reflect switching warehouse keeper, grain dealer and vegetable and dairy security license fees from PR to SEG. Additionally, transfer license fee program revenue of \$300,000 in 2001-02 to the APS fund. The transfer includes the estimated unencumbered balance (\$200,000) in a warehouse keeper and grain dealer appropriation that is being deleted and \$100,000 in fees from a dairy and vegetable security and trade practice regulation appropriation from amounts estimated by DOA to be derived from vegetable contractor and milk producer security fees. Estimate an additional \$790,000 in SEG revenue in 2002-03 from increased license fees. Further, deposit assessments estimated at \$1,749,000 annually and interest of \$137,000 in 2000-01 and \$198,000 in 2002-03 in the APS fund.

On January 1, 2002, transfer \$2,000,000 as a loan from the agrichemical management fund to the APS fund. Require DATCP to transfer at least \$250,000 from the APS fund back to the agrichemical management fund on July 1 of each year, beginning on July 1, 2003, and to repay the loan principal, plus interest compounded at 5% annually, from the APS fund by July 1, 2006. Require DATCP to make default claim payments, up to the deductible amount shown in Table 1, to eligible producers directly from the APS fund before calling any bonds. Further, allow DATCP to demand and collect from a contractor any claim amount paid from the APS fund because of that contractor's default.

**TABLE 1**

**Maximum DATCP Deductible Payments for Contractor Defaults**

<u>Contractor</u>	<u>Applicable Dates</u>	<u>Maximum Deductible</u>
Grain Dealer or Grain Warehouse Keeper	September, 1, 2002 - August 31, 2004	\$500,000
	September, 1, 2004 - August 31, 2006	750,000
	After August 31, 2006	1,000,000
Milk Contractor	May 1, 2002 - April 31, 2004	\$1,000,000
	May 1, 2004 - April 31, 2006	1,500,000
	After April 31, 2006	2,000,000
Vegetable Contractor	February 1, 2002 - January 31, 2004	\$500,000
	February 1, 2004 - January 31, 2006	750,000
	After February 1, 2006	1,000,000

Allow DATCP to promulgate rules to modify APS fund assessments to ensure that the assessments are sufficient to maintain the following minimum fund balances after January 1, 2006: (a) an overall balance of at least \$5 million, but not more than \$22 million; (b) a balance attributable to grain dealers of at least \$1 million, but not more than \$6 million; (c) a balance

attributable to grain warehouse keepers of at least \$200,000, but not more than \$1 million; (d) a balance attributable to milk contractors of at least \$3 million, but not more than \$12 million; and (e) a balance attributable to vegetable contractors of at least \$800,000, but not more than \$3 million. When calculating the amount of a contractor assessment (other than a number that statutorily appears), require that numbers be rounded to the nearest whole digit in the 6th decimal place. However, allow the actual assessment amount to be rounded to the nearest dollar.

*Industry Bonds.* Require DATCP to acquire surety bonds to secure payments of claims (for payments that go beyond deductible amounts) against each of the following contributing contractors: (a) a bond effective May 1, 2002 for milk contractors; (b) a bond effective September 1, 2002 for grain warehouse keepers and dealers; and (c) a bond effective February 1, 2002 for vegetable contractors. Require DATCP to procure the bonds according to general state purchasing standards. Industry bonds may not be cancelled or modified unless DATCP agrees to the change or receives a certified notice from the bond issuer at least one year before the proposed change. Require DATCP to maintain industry bonds so that each bond is between \$5 million and \$20 million, renews annually and is payable to DATCP for the appropriate claimants. Require DATCP to ensure that bonds are issued by a state-authorized surety business, that no surety issues more than one of the three industry bonds and that the form, terms and conditions of the bond issuance are considered appropriate. Allow any bond surety to demand and collect from a contractor any claim amount paid to DATCP because of that contractor's default, and require the surety to provide DATCP with a copy of any such demand.

*Blanket Bonds.* Require DATCP to acquire a surety bond effective February 1, 2002, to secure payments of claims (for payments that go beyond deductible amounts and demands on an industry bond) against contributing industries. Require DATCP to procure the bond according to general state purchasing standards. DATCP must ensure that the bond is jointly issued by at least three persons acting as co-sureties on the bond, that each co-surety is state-authorized and that the form, terms and conditions of the bond issuance are considered appropriate. Prohibit blanket bonds from being cancelled or modified, and any co-surety from withdrawing unless DATCP agrees to the change or DATCP receives a certified notice from the bond issuer at least one year before the proposed change. Require DATCP to maintain the blanket bond to be between \$20 million and \$40 million, renewing annually and payable to DATCP for the appropriate claimants. Further, allow any bond surety to demand and collect from a contractor any claim amount the bond surety paid to DATCP because of that contractor's default and require the surety to provide DATCP with a copy of any such demand.

*Recovery Proceedings.* Allow any of the following to file a default claim with DATCP against a contractor that is licensed or required to be licensed: (a) a grain producer or agent who claims that a grain dealer has failed to pay, when due, for grain procured in Wisconsin; (b) a grain producer or agent who has grain kept at a warehouse and who claims that a grain warehouse keeper has failed to return stored grain or its equivalent upon demand; (c) a milk producer or agent who claims that a milk contractor has failed to pay, when due, for producer milk procured in Wisconsin; or (d) a vegetable producer or agent who claims that a vegetable

contractor has failed to pay when due under a vegetable procurement contract. Require that an allowed claim be given the same priority in an insolvency proceeding or creditor's action as a claim for wages, except as otherwise provided by federal law.

Unless otherwise allowed by DATCP, require a claimant to file a default claim specifying the nature and amount of the default within 30 days after the claimant first learns of the default. DATCP may investigate the alleged default and may require the claimant to provide supporting documentation. Further, allow DATCP to initiate a recovery proceeding in response to one or more default claims by issuing a written notice announcing the recovery proceeding. Require DATCP to deliver a copy of the notice to the contractor and each claimant. Allow DATCP to invite other persons who may have default claims against the same contractor to file their claims in the recovery proceeding. The invitation may be posted at the contractor's place of business, published as a Class 3 notice, delivered to prospective claimants known to the Department or distributed by other appropriate means. Allow DATCP to specify a deadline and a procedure for filing default claims in the invitation, to indicate the amount of a prospective claimant's apparent claim and to ask the prospective claimant to verify or correct that amount.

Require DATCP to audit each claim included in a recovery proceeding and to reject a claim if (a) the claim is false or not adequately documented; (b) the claimant did not meet claim-filing deadlines; (c) the claimant, without any contractual obligation to do so, continued to deliver goods to the defaulting contractor more than 10 days after the claimant first learned of their default; or (d) the claimant is not an authorized claimant. Require DATCP to determine the amount of an allowed claim based on the contract between the parties, or if the contract is unclear, to determine the allowed claim amount based on applicable prices or other appropriate evidence. However, require DATCP to calculate the value of the stored grain based on local market prices the day a grain warehouse keeper failed to return the grain to a depositor upon demand. In addition, require DATCP to subtract from an allowed claim any offsetting payments made by the contractor and any obligations for which the claimant is liable to the contractor.

After DATCP completes its audit, require the Department to deliver a copy of the proposed decision to the contractor and each claimant that proposes findings of fact, conclusions of law and an order. The proposed decision must allow or disallow each part of a default claim, and further specify the amount of each allowed claim, the amount DATCP is authorized to pay and how DATCP will pay that amount. Also, require DATCP to explain a claimant's right to seek court recovery for amounts not paid by the Department. Further, specify a due date for a contractor or claimant to file written objections to the proposed decision. If no one files an objection, DATCP may issue the proposed decision as a final decision and deliver a copy to the contractor and each claimant. However, if someone files a timely objection, require DATCP to hold a public hearing on the objection and follow applicable state contested case procedures. Allow the Department to hear all objections in a single proceeding and after the proceeding, require DATCP to issue a final decision on the pending proceedings.

Except for claims allowed between April 30, 2002 and May 1, 2007, for default claims against a qualified producer agent (a milk contractor that procures milk in the state solely as a producer agent and complies with DATCP rules regarding qualified producer agents), DATCP's default claim amounts against a grain dealer or milk contractor who participates in the security fund pool are set at 80% of the first \$60,000 and 75% of any amount allowed in excess of \$60,000. Set DATCP default claim amounts for a default that occurs (a) between April 30, 2002 and May 1, 2004 at 15%; and (b) between April 30, 2004 and May 1, 2007 at 20%, of any amount allowed for default claims against a qualified producer agent who was contributing to the APS fund at the time of the default and maintained security of the lesser of \$500,000 or 7.5% of the largest amount of unpaid payroll obligations that the producer agent had in their last completed fiscal year, or any higher amount since then.

Unless otherwise restricted, require DATCP to pay default claim amounts for up to \$100,000 against a grain warehouse keeper who participates in the security fund pool. DATCP's default claim amounts against a vegetable contractor who participates in the security fund pool are set at 90% of the first \$40,000, 85% of the next \$40,000, 80% of the next \$40,000 and 75% of any amount allowed in excess of \$120,000, as shown in Table 2. If the total amount of default claims exceeds funds available from the security fund pool, require DATCP to prorate payments in proportion to the amount of each allowed claim.

**TABLE 2**

**DATCP Vegetable Contractor Claim Payments**

<u>Claim</u>	<u>Percent*</u>	<u>Payment</u>
\$40,000	90%	\$36,000
80,000	85	70,000
120,000	80	102,000
over 120,000	75	over 102,000

\* Only for the \$40,000 increment at that level.

If a contractor has filed security and does not participate in the security fund pool, DATCP must use the contractor's posted security to pay the full amount of claims, or a prorated amount if the security is inadequate to cover all claimants. If a contractor has filed security and also participates in the security fund pool, require DATCP to either use the contractor's posted security to reimburse the security fund pool for payments made or pay defaults directly from the posted security, and if additional security remains, use those monies to pay claimants up to 100% of the defaulted amount by prorating payments in proportion to allowed claims. Once a payment is accepted, to the extent of the payment, a claim against a contractor is released.

Prohibit DATCP from paying any default amount from APS fund appropriations if the default claim is related to a default by a grain dealer or grain warehouse keeper that occurs

before September 1, 2002, by a milk contractor that occurs before May 1, 2002, by a vegetable contractor that occurs before February 1, 2002 or by any contractor who was not participating in the security fund pool when the default occurred.

*Department Authority.* Allow DATCP to promulgate administrative rules to interpret and implement the APS program, modify license fees and surcharges, or to require a contractor to notify producers and agents of their license, security or APS fund contribution status. Allow DATCP to conduct investigations, including whether: (a) a contractor complies with these provisions; (b) a contractor is able to honor contract obligations when due; (c) a contractor has failed to honor contract obligations when due; (d) a grain warehouse keeper has sufficient grain on hand to meet their obligations to depositors; and (e) the nature and amount of a contractor's storage or other contract obligations are reasonable. Require the Department of Justice, at DATCP's request, to furnish legal services relating to the enforcement of the APS program. Give DATCP the authority to require a contractor to provide information regarding the APS program.

Allow DATCP, by special order, to require a contractor to take specific actions to remedy any violation of the APS program. Unless otherwise allowed, require DATCP to notify the contractor and provide a hearing opportunity before issuing an order. Allow DATCP to issue such an order without prior notice or hearing if the Department finds that the order is necessary to prevent a clear and imminent threat of harm to persons protected under the program. Such conditions may include: (a) a contractor failing to pay producers according to a contract under APS program requirements; (b) a contractor failing to file timely replacement insurance as required by the program; (c) a contractor failing to maintain a correct amount of security; (d) a contractor failing to pay a fund assessment when due; (e) a vegetable contractor failing to pay producers by January 31 for vegetables delivered by December 31 of the previous year, (unless authorized in a deferred payment contract); (f) a grain warehouse keeper failing to return grain to depositors upon demand as required; or (g) a grain warehouse keeper failing to maintain required grain inventory if the amount of the deficiency exceeds the lesser of 10,000 bushels or 10% of the keeper's obligations to depositors and the grain warehouse keeper fails to correct the deficiency within 15 days after receiving written notice from DATCP. If DATCP issues an order without prior notice or hearing, allow the contractor to request a hearing within 10 days of receiving the order and require DATCP to hold an informal hearing as soon as possible thereafter, but not later than 10 days after receiving the hearing request, unless the contractor waives the informal hearing or agrees to hold it at a later date. If the matter is not resolved at the informal hearing, require DATCP to hold a contested case hearing as soon as reasonably possible. While such a hearing request would not automatically stay a summary order, allow DATCP to stay a summary order pending a hearing.

Allow DATCP to deny, suspend, revoke, or impose conditions on a contractor's license, for just cause including a contractor's failure to comply with the APS program or an order issued under the program, to provide accurate, relevant information requested by DATCP, to file a required financial statement, security, fees or assessments, to meet licensing requirements, to honor contract obligations, or to reimburse DATCP or a bond surety within 60 days after the

Department or surety issues a reimbursement demand for the full amount paid because of the contractor's default. Unless otherwise allowed, require DATCP to notify the contractor and provide a hearing opportunity before sanctioning the license holder. Allow DATCP to sanction a license holder without prior notice or hearing if the Department finds that it is necessary to prevent a clear and imminent threat of harm to persons protected under the program (the relevant conditions would be the same as those used in issuing an immediate order under the APS program). If DATCP sanctions a license holder without prior notice or hearing, allow the contractor to request a hearing within 10 days of receiving a notice of the sanction and require DATCP to hold an informal hearing as soon as possible thereafter, but not later than 10 days after receiving the hearing request, unless the contractor waives the informal hearing or agrees to hold it at a later date. If the matter is not resolved at the informal hearing, require DATCP to hold a contested case hearing as soon as reasonably possible. While such a hearing request would not automatically stay a sanction, allow DATCP to stay a sanction pending a hearing.

In addition to other authorized penalties or remedies, allow DATCP to petition the circuit court for an ex parte temporary restraining order, a temporary injunction, or a permanent injunction to prevent, restrain, or enjoin any person from violating the APS program or any order issued under the program. Subject violators of the APS program or any order issued under the program to a forfeiture of between \$250 and \$5,000 for each violation. Further, if the violation is intentional, subject the violator to a fine of not more than \$10,000 or imprisonment for not more than one year in the county jail or both. Further, allow eligible affected parties to bring an action against the contractor to recover the amount of the allowed claim, less any recovery amount that DATCP pays to the claimant. Allow such claimants to recover costs of this court action, including all reasonable attorney fees. Claimants continue to have other legal rights against the contractor. In addition, allow DATCP to bring an action in court to recover any unpaid amount that a contractor owes the Department, including any unpaid fund assessment or reimbursement.

*Confidential Records.* Exempt DATCP records of contractor financial statements and purchase, storage or procurement records from open records law. However, DATCP may use these documents in a court proceeding or administrative contested case, subject to any protective order that the ruling authority deems appropriate.

*Agricultural Producer Security Council.* Create an APS council consisting of a person appointed by the DATCP Secretary for a three-year term from each of the following groups: (a) Farmers' Educational and Cooperative Union of America, Wisconsin Division; (b) Midwest Food Processors Association, Inc.; (c) National Farmers' Organization, Inc.; (d) Wisconsin Agri-Service Association, Inc.; (e) Wisconsin Cheese Makers Association; (f) one individual representing both the Wisconsin Corn Growers Association, Inc., and the Wisconsin Soybean Association, Inc.; (g) Wisconsin Dairy Products Association, Inc.; (h) Wisconsin Farm Bureau Federation; (i) Wisconsin Federation of Cooperatives; and (j) Wisconsin Potato and Vegetable Growers Association, Inc. Require the Secretary to appoint members from a choice of two nominees forwarded by each organization listed above. Initial appointees would have terms expiring on July 1, 2005 (rather than a set three-year term).

Require the Council to advise DATCP on the administration and enforcement of the APS program and to meet as often as the Department considers necessary, but at least once annually. Require DATCP to inform the Council of fund balances and payments and to consult with the Council before modifying any license fee, license surcharge, or fund assessment under the APS program.

*Delete Warehouse Keepers and Grain Dealers Security Act.* On September 1, 2002, delete the Warehouse Keepers and Grain Dealers Security Act. The following generally summarizes the Warehouse Keepers and Grain Dealers Security Act deleted under the bill. The act requires most warehouse keepers and grain dealers (including out-of-state dealers) to obtain an annual license from DATCP and to pay various fees based on the size of the operation in order to operate in the state. The act lays out the required duties of a warehouse keeper or grain dealer, including the accurate grading and weighing of grain, as well as record keeping. The act requires warehouse keepers to maintain insurance on all grain stored by the warehouse keeper. Further, warehouse keepers and grain dealers generally are required to file a detailed annual financial statement with DATCP that includes the value of products stored or purchased from producers. If the annual financial statement shows that a warehouse keeper or grain dealer does not meet minimum financial standards, they must file monthly business reports and file a bond or other security with DATCP to ensure monies are available for producers. DATCP is allowed to convert the security in order to pay producers, with interest, if a grain dealer fails to pay a producer or a warehouse dealer fails to return stored grain upon demand. The act also protects grain dealers by requiring producers who contract for the future sale and delivery of grain to meet the guidelines of the contract. The Department is given rights of inspection and investigation of warehouse keepers and grain dealers, as well as rule promulgation authority. If a warehouse keeper or grain dealer violates the act, their license can be suspended or revoked and the violator is subject to forfeitures, fines and imprisonment. By law, provisions of the Warehouse Keepers and Grain Dealers Security Act supersede requirements under the uniform commercial code.

## **Grain Dealers**

Unless otherwise noted, any provision in the bill related to grain dealers does not apply until September 1, 2002.

*Licensing and Application.* Require grain dealers that procure grain in Wisconsin to obtain a nontransferable, annual license that expires on August 31, unless they: (a) pay producers on delivery; or (b) buy grain solely for the dealer's own use as feed or seed and spend less than \$400,000 annually on that grain. Require DATCP to provide license forms and dealers to provide: (a) the legal name of the applicant and any trade name under which they operate as a grain dealer; (b) a statement of whether the applicant is an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity (if a corporation or cooperative, the applicant must list each of their officers, if a partnership, the applicant must list each partner); (c) the primary business mailing address and the name of a responsible individual at that location; (d) the street address of each location the grain dealer operates from

and the name of a responsible individual at each staffed location; (e) all required license fees and surcharges; (f) a financial statement, if required; and (g) other relevant information required by DATCP. As of January 1, 2002, require a grain dealer applying for a license for the license year that begins on September 1, 2002, to submit an application that complies with APS program requirements.

In addition, require a grain dealer to provide a sworn and notarized statement, signed by the applicant or their officer, with their license application. The statement must include: (a) the amount paid, during the last fiscal year, for grain procured in Wisconsin, or if the applicant has not yet operated in the state, an estimated amount that will be paid during their first complete fiscal year for such grain; (b) the amount of the above payments that are made under deferred payment contracts; and (c) whether the applicant has had any obligations under deferred payment contracts in the last fiscal year for grain procured in the state. Require DATCP to approve or deny a license application within 30 days of receipt. Further, if a license is denied, DATCP must provide the applicant a written reason for the denial. If approved, a grain dealer must display a copy of the license on each truck used to haul grain in Wisconsin and at each business location operated in the state. When DATCP issues an annual license, they are required to inform the grain dealer of their annual fund assessment, along with the quarterly installment due dates, amounts and late payment penalty.

*License Fees and Surcharges.* Unless DATCP specifies a different fee or surcharge by rule, require a grain dealer to pay a nonrefundable license processing fee of \$25 and the following applicable license fees and surcharges (fees and surcharges may not be prorated): (a) if the applicant's annual payment for state grain (as notarized) exceeds \$500,000, the fee is \$500 plus \$225 per additional business location, if it is between \$50,000 and \$500,000, the fee is \$200, and if it is less than \$50,000, the fee is \$50; (b) \$45 for each truck, in excess of one truck, used to haul grain in the state; (c) a surcharge of \$425 if the grain dealer is required to file a financial statement and files an unaudited statement; (d) a surcharge of \$500 if DATCP determines that a grain dealer operated without a license in the past year, in violation of the law, in addition to all payments due for the year of violation (payment of this surcharge would not relieve the applicant of any other civil or criminal liability, nor would it constitute evidence of any law violation); (e) a surcharge of \$100 if in the past year, the applicant failed to file a required annual financial statement by the statutory deadline; and (f) a renewal surcharge of \$100 if an applicant fails to renew a license by its expiration date, unless the grain dealer is not required to be licensed. After December 31, 2001, deposit all license fees and surcharges paid under the Warehouse Keepers and Grain Dealers Security Act to the APS fund.

Require DATCP to provide, with each license application form, a written statement of all license fees and surcharges required, or the formula for determining them. In addition, DATCP must specify any applicable fee credit. If the balance in the APS fund contributed by grain dealers exceeds \$2,000,000 on June 30, DATCP must credit 50% of the excess amount against grain dealer license fees to dealers who file timely renewal applications for the next license year. Credit the amount on a prorated basis, in proportion to the total license fees paid in the past four license years. Prohibit DATCP from issuing an annual license until all DATCP-identified



fees and statements are paid. If a fee is paid under protest, require DATCP to refund any amount deemed excessive.

*Financial Statements.* If a dealer's annual payment for state grain (as notarized) exceeds \$500,000, or if they had any obligations under deferred payment contracts in the last fiscal year for grain procured in the state, that dealer must file an annual financial statement with DATCP before the Department may first grant their license, and every license year thereafter unless the grain dealer both contributes to the security fund pool and acts only as an agent for a producer in marketing or accepting payment for the grain. Any dealer must notify DATCP and file an annual financial statement before entering any deferred payment contract. Require that a financial statement either be reviewed by an independent public accountant and signed under oath by the dealer regarding its accuracy or audited by an authorized public accountant. However, if a grain dealer's annual payment for state grain exceeds \$3 million or their last two license applications report more than \$2 million in payments, the financial statement must be audited by an authorized public accountant using generally accepted accounting and auditing standards. Unless the grain dealer is a sole proprietor with an unaudited financial statement who must file a financial statement on a historical cost basis, require that annual financial statements be prepared according to generally accepted accounting principles. The financial statement of a parent organization, subsidiary, predecessor or successor is not an acceptable substitute.

For any grain dealer who has been in business for more than one year, the financial statement consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, a disclosure of the grain dealer's unpaid obligations to grain producers and agents and other information required by DATCP. If the grain dealer is a sole proprietor, that person must include business and personal financial statements. For those grain dealers in business for less than a year, the financial statement may consist of a balance sheet and notes. All filed financial statements must include a calculation of the dealer's ratio of the value of current assets to the value of current liabilities (current ratio) and the debt to equity ratio. Unless DATCP specifically approves an asset, for the purposes of calculating the current ratio and debt to equity ratio, grain dealers may not include the following assets: (a) a nontrade note or account receivable from an officer, director, employee, partner or stockholder, or from a member of the family of any of those individuals, unless the note or account receivable is secured by a first priority security interest in real or personal property; (b) a note or account receivable from a parent organization, subsidiary or affiliate, other than an employee; or (c) a note or account that has been receivable for more than one year, unless the grain dealer has established an offsetting reserve for uncollectable notes and accounts receivable.

For license renewals, the required annual financial statement must be filed by the 15<sup>th</sup> day of the fourth month following the close of the grain dealer's fiscal year, unless a written extension request is filed at least ten days before the deadline and DATCP extends the filing deadline for up to 30 days. In addition, any grain dealer that contributes to the security fund pool may voluntarily file a financial statement with DATCP to lower their APS fund assessment. Allow DATCP to reject any financial statement for not meeting set standards.

Further, allow DATCP to require a licensed grain dealer to file with the Department an interim financial statement along with the grain dealer's sworn and notarized statement that the financial statement is correct.

*Security Requirements.* Require a grain dealer to file and maintain security with DATCP if, when the grain dealer is licensed, their annual payment for state grain exceeds \$500,000 and their required annual financial statement shows negative equity. Allow DATCP to release security filed for this purpose if a grain dealer pays the security fund pool quarterly assessment that would have been required if the grain dealer had been a pool participant on the most recent quarterly installment date and if the dealer either (a) reports, for at least two consecutive years, no more than \$500,000 in annual grain payments to state producers, or (b) provides an annual financial statement that shows positive equity for at least two consecutive years.

Require dealers with any deferred payment contract obligations to file and maintain security, unless the dealer has positive equity and their annual financial statement either covers a fiscal year ending prior to January 2, 2006 that shows debt to equity ratio of not more than five to one, or covers a fiscal year ending after January 1, 2006 that shows debt to equity ratio of not more than four to one. Allow DATCP to release security filed for this purpose if either a grain dealer (a) has not had any deferred payment contract obligations since the beginning of their last completed fiscal year, or (b) files two consecutive annual financial statements showing that the grain dealer meets the applicable equity and debt to equity ratio requirement that would exempt them from initially being required to file security.

In addition, require grain dealers who filed security under the Warehouse Keepers and Grain Dealers Security Act before September 1, 2002 to maintain that security amount. Allow DATCP to release this security on December 1, 2002, unless the bill otherwise requires the dealer to file security. Further, require DATCP to release security if a dealer has paid all grain obligations and is no longer in business.

Allow DATCP to approve only specified forms of security, including currency. A commercial surety bond is allowable if it is payable to DATCP for the benefit of grain producers and agents, is issued by a person authorized to operate a surety business in the state, is issued as a continuous term bond that may be canceled only upon 90 days' prior certified written notice or with DATCP's written agreement and is issued in forms, terms and conditions that the Department considers appropriate. A certificate of deposit or money market certificate is allowed if: (a) the certificate may not be canceled or redeemed without DATCP authorization and is issued or endorsed to the Department for the benefit of grain producers and agents who deliver grain to the grain dealer; (b) no person may transfer or withdraw funds represented by the certificate without DATCP permission; (c) the certificate renews automatically without Departmental action; and (d) the certificate is issued in forms, terms and conditions that DATCP considers appropriate. An irrevocable bank letter is allowed if the letter of credit is payable to DATCP for the benefit of grain producers and agents, is issued on bank letterhead for an initial period of at least one year, renews automatically unless at least 90 days before the scheduled renewal date the issuing bank certifiably notifies DATCP that the letter of credit will not be

renewed and is issued in forms, terms and conditions that the Department considers appropriate. Security filed under the Warehouse Keepers and Grain Dealers Security Act before September 1, 2002 is allowable until January 1, 2003, at which time DATCP will withdraw its approval of any security that does not comply with the new requirements listed above. DATCP holds all security for the benefit of grain producers and producer agents who deliver grain to dealers. Allow DATCP to release security if the grain dealer files DATCP-approved alternative security of equal value.

Require all dealers who must maintain security to file reports to DATCP on the Department's specified form, by the 10th day of each month. Each monthly report would contain reasonably required information, including the grain dealer's average monthly payment for the three months, during the preceding 12 months, in which the grain dealer made the largest monthly payments for grain procured in the state. In addition, each report must include the grain dealer's highest total unpaid obligations, at any time during the preceding 12 months, for state grain procured under deferred payment contracts. If the amount owed on deferred price contracts has not yet been determined, the grain dealer must estimate the amount based on contract terms and prevailing market prices on the last day of the previous month.

*Security Payments.* If a dealer is required to maintain security, it must be greater than or equal to, the grain dealer's highest one-time total in the past year of unpaid obligations for state grain procured under deferred payment contracts. Further, prior to December 2, 2002, additional security of at least 35% of the grain dealer's average payments during the three highest months in the past year to Wisconsin grain producers must also be maintained. Allow DATCP to release any security above the required amounts.

Allow DATCP to demand, in writing, additional security from a grain dealer if either the dealer fails to provide relevant, required information regarding security requirements, or if their existing security falls below the required amount for any reason, including depreciation in the value of the security filed with DATCP, an increase in grain payments or grain prices or the cancellation of any security filed with the Department. Require DATCP to indicate why additional security is required, the amount required and the filing deadline. The deadline must be within 30 days of when DATCP issued its demand for additional security. Although a grain dealer may request a hearing under state law, the request does not automatically stay a security demand. Further, if a grain dealer fails to provide the required additional security, require the dealer to give written notice of that fact to all Wisconsin producers and agents from whom the dealer procures grain. If the grain dealer fails to give accurate notice within five days of the security filing deadline, require DATCP to promptly notify affected parties by publishing a Class 3 notice and allow the Department to notify individual affected producers or agents. If a grain dealer does not provide additional security, allow DATCP to suspend or revoke the grain dealer's license or to issue a summary order under these provisions that prohibits the dealer from procuring grain or requires the grain dealer to pay cash on delivery.

*Security Fund Pool Assessments.* Require grain dealers who must be licensed to pay fund assessments and allow a voluntarily licensed grain dealer to pay voluntary assessments unless

either is disqualified. Require that annual fund assessments be paid in equal quarterly installments with the first installment due October 1, the second January 1, the third April 1 and the fourth July 1 of the license year, but allow any installment to be prepaid. If a dealer applies for a license during a license year, the fund assessment of all that year's quarterly installments that became due before that day must be paid with the first quarterly installment due after DATCP issues a license. A penalty of the greater of \$50 or 10% of the overdue installment amount is owed if a grain dealer fails to pay an installment when due. Unless DATCP rules specify differently, the annual assessment is the higher of \$20 or the sum of the following three determinations: (a) both the current assessment ratio and the debt to equity assessment ratio multiplied by the amount paid by the grain dealer, during the last fiscal year, for grain procured in the state, or if the applicant has not yet operated in this state, an estimated amount that will be paid during the applicant's first complete fiscal year for such grain, and (b) the amount of annual payments made under deferred payment contracts multiplied by the deferred payment assessment.

Current Assessment Ratio. If a grain dealer's financial statement shows a current ratio (the ratio of the value of current assets to the value of current liabilities) of at least 1.25 to 1, calculate the current ratio assessment (which if less than zero, the assessment is set at zero) by multiplying 0.00003 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0) by the result of the following formula:

$$\left[ -1 \times \left( \frac{\text{current ratio} - 1}{3} \right) \right]^3 + \left( \frac{0.65}{\text{current ratio} - 0.75} \right)^5 + 2.$$

If a grain dealer's financial statement shows a current ratio of between 1 to 1 and 1.25 to 1, calculate the current ratio assessment by multiplying 0.000045 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000036) by the result of the above formula. If a grain dealer's financial statement shows a current ratio of less than or equal to 1 to 1, calculate the current ratio assessment by multiplying 0.000045 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000036) by 120.81376. For those grain dealers, not acting solely as a producer agent, who do not file an annual financial statement, calculate the current ratio assessment by multiplying 0.000045 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000036) by 5.71235. For a grain dealer who acts solely as a producer agent and does not file an annual financial statement, the assessment is .00025 until a dealer's fifth 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool when the current ratio assessment becomes 0.000175.

Debt to Equity Assessment. If a grain dealer's financial statement shows positive equity and a debt to equity ratio of not more than 4 to 1, calculate the debt to equity ratio assessment

(which if less than zero, the assessment is set at zero) by multiplying 0.0000125 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0) by the result of the following formula:

$$\left( \frac{\text{Debt / Equity Ratio} - 4}{3} \right)^3 + \left( \frac{\text{Debt / Equity Ratio} - 1.7}{1.75} \right)^7 + 2.$$

If a grain dealer's financial statement shows a debt to equity ratio of between 4 to 1 and 5 to 1, calculate the debt to equity ratio assessment by multiplying 0.00001875 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000015) by the result of the above formula. If a grain dealer's financial statement shows negative equity or a debt to equity ratio of at least 5 to 1, calculate the debt to equity ratio assessment by multiplying 0.00001875 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000015) by 86.8224. For those grain dealers, not acting solely as a producer agent, who do not file an annual financial statement, calculate the debt to equity ratio assessment by multiplying 0.00001875 (except for in the dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000015) by 8.77374. For a grain dealer who acts solely as a producer agent and does not file an annual financial statement, the debt to equity assessment is .00025 until a dealer's fifth 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool when the debt to equity ratio assessment becomes 0.000175.

Deferred Payment Assessment. A grain dealer's deferred payment assessment rate is 0.0035 until a dealer's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool when the deferred payment assessment becomes 0.002.

Require grain dealers to deduct the amount of a deferred payment assessment from the amount that a grain dealer pays to a producer or agent and to disclose the assessment amount, or the method of determining the amount under a deferred price contract, in the deferred payment contract.

Disqualified Grain Dealers. Disqualify a grain dealer from the security fund pool, and require those dealers to pay cash on delivery for producer grain if: (a) DATCP denies, suspends or revokes the dealer's license; (b) DATCP issues a written notice disqualifying the grain dealer for cause, including failure to pay required fund assessments or file a financial statement when due; or (c) a grain dealer fails to reimburse either the Department or a bond surety, within 60 days after a reimbursement demand is issued, for the full amount that DATCP or the surety paid to claimants because of that grain dealer's default. Further, disqualify a grain dealer from the security fund pool if that grain dealer is required to file and maintain individual security with DATCP because their annual payment for state grain exceeds \$500,000 and their required annual financial statement shows negative equity. Once DATCP determines that certain standards have been met, it may release a dealer's security and that dealer becomes eligible for

security fund pool participation. A disqualified grain dealer may not be refunded any assessments and is liable for any unpaid assessments that were due before disqualification. A grain dealer no longer needs to pay assessments when disqualified.

*Records.* Require that the following records and receipt copies be kept for at least six years and be made available for DATCP inspection or copying. Require grain dealers to keep records currently required under the Warehouse Keepers and Grain Dealers Security Act and related DATCP rules. Require grain dealers to keep complete, accurate, current, well-organized and accessible records and accounts of all grain procured and all grain sold or marketed by the dealer. From the records, the grain dealer and DATCP should be able to determine the nature and amount of the grain dealer's obligations and the grain dealer's accounts receivable from the sale or marketing of grain, which includes the names of the account debtors, the amount receivable from each account debtor and the dates on which payment is due. Further, the records must show the kinds and amounts of grain: (a) procured, procurement dates, procurement terms and the persons from whom the grain dealer procured the grain; (b) sold or marketed, the sale or marketing dates, the sale or marketing terms, and the persons to whom the dealer sold or marketed the grain; (c) received from others, used by the dealer for feed, seed, milling, manufacturing, processing or other purposes; and (d) received from others, that the grain dealer has on hand, including that owned by the grain dealer, and that held for others. In addition, the records must readily relay the nature and amount of the grain dealer's obligations to both those persons that deliver grain to a warehouse keeper, without transferring ownership of the grain, under agreements for the storage of grain, and obligations to producers and agents, including deferred payment contract obligations. Require the grain dealer to keep a daily record of obligations under priced contracts and a separate daily record of obligations under deferred price contracts that have not yet been priced.

In addition, shipment-specific procurement records must include: (a) the kind and weight of grain procured; (b) the grade and quality of the grain, if determined; (c) the date on which the dealer procured the grain; (d) the name and address of the person from whom the grain dealer procured the grain; (e) whether the grain dealer purchased the grain, holds it under a storage agreement or markets the grain as a producer agent; (f) the terms of purchase, storage, or marketing; and (g) the terms of any deferred payment contract.

Require grain dealers to immediately provide a receipt for all grain received. The receipt must include: (a) the name of the grain dealer and a statement indicating whether the grain dealer is a corporation; (b) a permanent business address at which the holder of the receipt can readily contact the dealer; (c) a statement identifying the document as a receipt for grain, including the date and kind of grain received; (d) the net weight of grain received or, if the grain dealer receives the grain at the grain producer's farm, the approximate net weight of the grain; (e) the grade and quality of the grain, if determined; (f) a statement identifying the receipt as a purchase receipt, storage receipt or receipt for grain marketed by the grain dealer as a producer agent; or (g) the grain dealer's promise to pay the total amount due for grain, less any discounts that may apply, within seven calendar days after receiving the grain, unless the dealer pays cash on delivery, the dealer receives the grain under a legal deferred payment

contract or the receipt is clearly identified as a storage receipt. Consider a receipt not clearly identified under (f) above a purchase receipt, except that if the dealer also operates as a grain warehouse keeper under the same name, the receipt is considered a storage receipt.

*Deferred Payment Contracts.* Require that before a grain dealer accepts grain under a deferred payment contract, both parties must sign the contract and then obtain a copy. Require that deferred payment contracts include: (a) a unique contract identification number; (b) the type, weight, grade, and quality of grain procured and a statement that price adjustments may apply if delivered grain varies in grade or quality from that identified in the contract; (c) the price for the grain or, in a deferred price contract, the method and deadline by which the price will be determined; (d) the date by which the grain dealer agrees to make full payment for the grain, (either within 180 days after the contract price is established or within 180 days after the dealer takes control of the grain, whichever is later); (e) a pricing deadline within one year of when the dealer takes control of the grain if the contract is a deferred price contract; and (f) the grain dealer's permanent business location. Further, require that the contract clearly disclose that it is not a storage contract. In addition, require that when the grain is purchased from a producer, the following statement in capitalized, boldface print must appear immediately above the contract signature line: **THIS IS NOT A STORAGE CONTRACT. THE GRAIN DEALER (BUYER) BECOMES THE OWNER OF ANY GRAIN THAT THE PRODUCER (SELLER) DELIVERS TO THE GRAIN DEALER UNDER THIS CONTRACT. THE PRODUCER RELINQUISHES OWNERSHIP AND CONTROL OF THE GRAIN, AND BECOMES AN UNSECURED CREDITOR PENDING PAYMENT.**

Require a dealer to make full payment under a deferred payment contract by the deadline date specified in the contract. Further, prohibit the extension of a payment or pricing deadline under (d) or (e) above unless a new contract (referring to the contract number of the original contract) is signed that extends either deadline or both deadlines for up to 180 days.

*Insurance.* Require all grain dealers that are required to be licensed to maintain fire and extended coverage insurance issued by an authorized insurance company that covers all grain in the custody of the dealer, whether owned by the dealer or held for others, at the full local market value of the grain. Further, require grain dealers to replace their insurance policy so that no lapse in coverage occurs when a policy is canceled. Prohibit grain dealers from misrepresenting the nature, coverage or material terms of their insurance policy to the Department or to any producer or agent.

*Business Practices.* Require grain dealers, when making a determination, to accurately determine and record the weight, grade and quality of grain using accurate weighing, testing or grading equipment. Further, require a grain dealer to pay for grain when payment is due and prohibit a dealer from making any payment by nonnegotiable check or note or by check drawn on an account containing insufficient funds. Require licensed grain dealers to maintain a permanent business address at which grain producers may readily contact the dealer at least between 9:00 a.m. and 2:30 p.m. on each day that the Chicago Board of Trade is open for trading. Require dealers to prominently post business hours at each of their Wisconsin business locations. Prohibit grain dealers from misrepresenting the weight, grade or quality of grain

received from or delivered to any person, from falsifying or conspiring to falsify any record or account, or from making any false or misleading representation to DATCP or to a producer related to any APS program requirements. Require dealers to file the full amount of any additional security required by the DATCP-specified date and if the grain dealer is licensed, prohibit the dealer from engaging in any activity that is inconsistent with a representation made in the grain dealer's annual license application.

Allow a grain dealer to require a grain producer or agent to disclose in writing any liens or security interests that apply to grain procured by a dealer. The dealer may require the producer or agent to specify the nature and amount of each lien or security interest and the identity of the person holding each. Prohibit a grain producer from falsifying or fraudulently withholding this information in order to sell grain. Further, prohibit a grain producer or agent who contracts to sell and deliver grain to a dealer at an agreed price from wrongfully refusing to deliver that grain according to the contract.

### **Grain Warehouse Keepers**

Unless otherwise noted, any provision in the bill related to grain warehouse keepers does not apply until September 1, 2002. Further, this section does not apply to persons licensed under the U.S. Warehouse Act.

*Licensing and Application.* Require Wisconsin grain warehouse keepers that hold more than 50,000 bushels of grain for others (including those with a combined capacity of over 50,000 bushels, unless the keeper proves that they never hold more than 50,000 bushels of such grain) to obtain a nontransferable, annual license that expires on August 31. Require DATCP to provide license forms and keepers to provide (a) the legal name of the applicant and any trade name under which they operate as a grain warehouse keeper; (b) a statement of whether the applicant is an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity (if a corporation or cooperative, the applicant must list each of their officers, if a partnership, the applicant must list each partner); (c) the primary business mailing address and the name of a responsible individual at that location; (d) the street address and capacity of each location the grain warehouse keeper operates from or proposes to operate from, with the total capacity and the name of a responsible individual at each staffed location; (e) all required license fees and surcharges; (f) a financial statement, if required and not yet filed; (g) proof (such as certification by an authorized, licensed insurance company) that the applicant meets insurance requirements, unless they previously filed proof that remains current; and (h) other relevant information required by DATCP. Further, require a warehouse keeper to notify DATCP in writing before adding a warehouse or changing its location or capacity. The notification must specify any change in the combined capacity of warehouses operated by the grain warehouse keeper. As of January 1, 2002, require a grain warehouse keeper applying for a license for the license year that begins on September 1, 2002, to submit an application that complies with APS program requirements.

Require DATCP to approve or deny a license application within 30 days of receipt. Further, if a license is denied, DATCP must provide the applicant a written reason for the



denial. If approved and the license is required, a grain warehouse keeper must display a copy of the license at each warehouse. When DATCP issues an annual license, they are required to inform the grain warehouse keeper of their annual fund assessment, along with the quarterly installment due dates, amounts and late payment penalty.

*License Fees and Surcharges.* Unless DATCP specifies a different fee or surcharge by rule, require a grain warehouse keeper to pay a nonrefundable license processing fee of \$25 plus \$25 for each site the warehouse keeper will operate at (sites within one-half mile of each other are considered a single site). Institute the following applicable inspection fees, based on the combined capacity (in bushels) of a keeper's grain warehouses:

<u>Combined Capacity</u>	<u>Fee</u>
Less than 150,000	\$500
150,000-250,000	550
250,000-500,000	600
500,000-750,000	650
750,000-1,000,000	700
1,000,000-2,000,000	800
2,000,000-3,000,000	900
3,000,000-4,000,000	1,000
Over 4,000,000	1,100

A supplementary inspection fee of \$275 would apply for each warehouse (more than one-half mile apart), in excess of one that would be operated. In addition, the following license surcharges would apply: (a) a surcharge of \$500 if DATCP determines that a grain warehouse keeper operated without a license in the past year, in violation of the law, in addition to all payments due for the year of violation (payment of this surcharge would not relieve the applicant of any other civil or criminal liability, nor would it constitute evidence of any law violation); (b) a surcharge of \$100 if in the past year, the applicant failed to file a required annual financial statement by the statutory deadline; and (c) a renewal surcharge of \$100 if an applicant fails to renew a license by its expiration date. Fees and surcharges are not prorated for applications submitted during a license year. After December 31, 2001, deposit all license fees and surcharges paid under the Warehouse Keepers and Grain Dealers Security Act to the APS fund.

Require DATCP to provide, with each license application form, a written statement of all license fees and surcharges required, or the formula for determining them. In addition, DATCP must specify any applicable fee credit. If the balance in the APS fund contributed by grain warehouse keepers exceeds \$300,000 on June 30, DATCP must credit 12.5% of the excess amount against grain warehouse keeper inspection fees to keepers who file timely renewal applications for the next license year. Credit the amount on a prorated basis, in proportion to the total license fees paid in the past four license years. Prohibit DATCP from issuing an annual

license until all DATCP-identified fees and statements are paid. If a fee is paid under protest, require DATCP to refund any amount deemed excessive.

*Financial Statements.* If a grain warehouse keeper is licensed to operate with a combined capacity of over 300,000 bushels, that keeper must file an annual financial statement with DATCP before the Department may first grant their license and every year thereafter. Require that a financial statement either be reviewed by an independent public accountant and signed under oath by the keeper regarding its accuracy or audited by an authorized public accountant. However, if a grain warehouse keeper's combined capacity exceeds 500,000 bushels, the financial statement must be audited by an authorized public accountant using generally accepted accounting and auditing standards. Unless the grain warehouse keeper is a sole proprietor with an unaudited financial statement who must file a financial statement on a historical cost basis, require that annual financial statements be prepared according to generally accepted accounting principles. The financial statement of a parent organization, subsidiary, predecessor or successor is not an acceptable substitute.

For any grain warehouse keeper who has been in business for more than one year, the financial statement consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements and other information required by DATCP. If the grain warehouse keeper is a sole proprietor, that person must include business and personal financial statements. For those grain warehouse keepers in business for less than a year, the financial statement may consist of a balance sheet and notes. All filed financial statements must include a calculation of the keeper's ratio of the value of current assets to the value of current liabilities (current ratio) and the debt to equity ratio. Unless DATCP specifically approves an asset, for the purposes of calculating the current ratio and debt to equity ratio, grain warehouse keepers may not include the following assets: (a) a nontrade note or account receivable from an officer, director, employee, partner or stockholder, or from a member of the family of any of those individuals, unless the note or account receivable is secured by a first priority security interest in real or personal property; (b) a note or account receivable from a parent organization, subsidiary or affiliate, other than an employee; or (c) a note or account that has been receivable for more than one year, unless the grain warehouse keeper has established an offsetting reserve for Uncollectable notes and accounts receivable.

For license renewals, the required annual financial statement must be filed by the 15<sup>th</sup> day of the fourth month following the close of the grain warehouse keeper's fiscal year, unless a written extension request is filed at least 10 days before the deadline and DATCP extends the filing deadline for up to 30 days. In addition, any grain warehouse keeper that contributes to the security fund pool may voluntarily file a financial statement with DATCP to lower their APS fund assessment. Allow DATCP to reject any financial statement for not meeting set standards. Further, allow DATCP to require a licensed grain warehouse keeper to file with the Department an interim financial statement along with the grain warehouse keeper's sworn and notarized statement that the financial statement is correct.

*Security Requirements.* Require a grain warehouse keeper to file and maintain security with DATCP if when the grain warehouse keeper is licensed, their reported combined warehouse capacity exceeds 300,000 bushels and their required annual financial statement shows negative equity. Allow DATCP to release security filed for this purpose if a grain warehouse keeper pays the security fund pool quarterly assessment that would have been required if the grain warehouse keeper had been a pool participant on the most recent quarterly installment date and if the keeper either (a) reports, for at least two consecutive years, combined warehouse capacity below 300,000 bushels, or (b) provides an annual financial statement that shows positive equity for at least two consecutive years.

Require grain warehouse keepers who filed security under the Warehouse Keepers and Grain Dealers Security Act before September 1, 2002 to maintain that security amount. Allow DATCP to release this security on December 1, 2002, unless the bill otherwise requires the keeper to file security. Further, require DATCP to release security if a grain warehouse keeper has paid all grain obligations and is no longer in business.

Allow DATCP to approve only specified forms of security, including currency. A commercial surety bond is allowable if it is payable to DATCP for the benefit of grain depositors, is issued by a person authorized to operate a surety business in the state, is issued as a continuous term bond that may be canceled only upon 90 days' prior certified written notice or with DATCP's written agreement and is issued in forms, terms and conditions that the Department considers appropriate. A certificate of deposit or money market certificate is allowed if: (a) the certificate may not be canceled or redeemed without DATCP authorization and is issued or endorsed to the Department for the benefit of grain depositors; (b) no person may transfer or withdraw funds represented by the certificate without DATCP permission; (c) the certificate renews automatically without Departmental action; and (d) the certificate is issued in forms, terms and conditions that DATCP considers appropriate. An irrevocable bank letter is allowed if the letter of credit is payable to DATCP for the benefit of grain depositors, is issued on bank letterhead for an initial period of at least one year, renews automatically unless at least 90 days before the scheduled renewal date the issuing bank certifiably notifies DATCP that the letter of credit will not be renewed and is issued in forms, terms and conditions that the Department considers appropriate. Security filed under the Warehouse Keepers and Grain Dealers Security Act before September 1, 2002 is allowable until January 1, 2003, at which time DATCP will withdraw its approval of any security that does not comply with the new requirements listed above. DATCP holds all security for the benefit of grain depositors. Allow DATCP to release security if the grain warehouse keeper files DATCP-approved alternative security of equal value.

Require all keepers who must maintain security to file reports to DATCP on the Department's specified form, by the 10th day of each month. Each monthly report would contain reasonably required information, including the amount of each type of grain stored in each warehouse on the last day of the preceding month.

*Security Payments.* If a keeper is required to maintain security, it must be equal to at least 20% of the current local market value of grain held for depositors. Allow DATCP to release any security above the required amounts.

Allow DATCP to demand, in writing, additional security from a grain warehouse keeper if either the keeper fails to provide relevant, required information regarding security requirements, or if their existing security falls below the required amount for any reason, including depreciation in the value of the security filed with DATCP, increased obligations to depositors or the cancellation of any security filed with the Department. Require DATCP to indicate why additional security is required, the amount required and the filing deadline. The deadline must be within 30 days of when DATCP issued its demand for additional security. Although a grain warehouse keeper may request a hearing under state law, the request does not automatically stay a security demand. Further, if a grain warehouse keeper fails to provide the required additional security, require the keeper to notify grain depositors. If the grain warehouse keeper fails to give accurate notice within five days of the security filing deadline, require DATCP to promptly notify affected parties by publishing a Class 3 notice and allow the Department to notify individual affected depositors. If a grain warehouse keeper does not provide additional security, allow DATCP to suspend or revoke the grain warehouse keeper's license or to issue a summary order.

*Security Fund Pool Assessments.* Require grain warehouse keepers who must be licensed to pay fund assessments unless they are disqualified. Require that annual fund assessments be paid in equal quarterly installments with the first installment due October 1, the second January 1, the third April 1 and the fourth July 1 of the license year, but allow any installment to be prepaid. If a keeper applies for a license during a license year, the fund assessment of all that year's quarterly installments that became due before that day must be paid with the first quarterly installment due after DATCP issues a license. A penalty of the greater of \$50 or 10% of the overdue installment amount is owed if a grain warehouse keeper fails to pay an installment when due. Unless DATCP rules specify differently, the annual assessment is the higher of \$20 or the sum of both the current assessment ratio and the debt to equity assessment ratio multiplied by the keeper's combined warehouse capacity, in bushels.

*Current Assessment Ratio.* If a grain warehouse keeper's financial statement shows a current ratio (the ratio of the value of current assets to the value of current liabilities) of at least 1.25 to 1, calculate the current ratio assessment (which if less than zero, the assessment is set at zero) by multiplying 0.00003 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0) by the result of the following formula:

$$\left[ -1 \times \left( \frac{\text{current ratio} - 1}{3} \right) \right] + \left( \frac{0.65}{\text{current ratio} - 0.75} \right) + 2.$$

If a grain warehouse keeper's financial statement shows a current ratio of between 1 to 1 and 1.25 to 1, calculate the current ratio assessment by multiplying 0.000045 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000036) by the result of the above formula. If a grain warehouse keeper's financial statement shows a current ratio of less than or equal to 1 to 1, calculate the current ratio assessment by multiplying 0.000045 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000036) by 120.81376. For those grain warehouse keepers who do not file an annual financial statement, calculate their current ratio assessment by multiplying 0.000045 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000036) by 5.71235.

**Debt to Equity Assessment.** If a grain warehouse keeper's financial statement shows positive equity and a debt to equity ratio of not more than 4 to 1, calculate the debt to equity ratio assessment (which if less than zero, the assessment is set at zero) by multiplying 0.0000125 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0) by the result of the following formula:

$$\left( \frac{\text{Debt} / \text{Equity Ratio} - 4}{3} \right) + \left( \frac{\text{Debt} / \text{Equity Ratio} - 1.7}{1.75} \right) + 2.$$

If a grain warehouse keeper's financial statement shows a debt to equity ratio of between 4 to 1 and 5 to 1, calculate the debt to equity ratio assessment by multiplying 0.00001875 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000015) by the result of the above formula. If a grain warehouse keeper's financial statement shows negative equity or a debt to equity ratio of at least 5 to 1, calculate the debt to equity ratio assessment by multiplying 0.00001875 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000015) by 86.8224. For those grain warehouse keepers who do not file an annual financial statement, calculate the debt to equity ratio assessment by multiplying 0.00001875 (except for in the keeper's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000015) by 8.77374.

**Disqualified Grain Warehouse Keepers.** Disqualify a grain warehouse keeper from the security fund pool if DATCP denies, suspends or revokes the keeper's license or if that grain warehouse keeper is required to file and maintain individual security with DATCP because their combined capacity exceeds 300,000 bushels and their required annual financial statement shows negative equity. Once DATCP determines that certain standards have been met, it may release a keeper's security and that keeper becomes eligible for security fund pool participation. A disqualified grain warehouse keeper may not be refunded any assessments and is liable for any unpaid assessments that were due before disqualification. A grain warehouse keeper no longer needs to pay assessments when disqualified.

**Records and Receipts.** Require that the following records and receipt copies be kept for at least six years and be made available for DATCP inspection or copying. Require grain

warehouse keepers to keep records currently required under the Warehouse Keepers and Grain Dealers Security Act and related DATCP rules. Require grain warehouse keepers to maintain complete, accurate and current records and accounts of all grain received into and withdrawn from each grain warehouse. From the records, the grain warehouse keeper and DATCP should be able to determine on a daily basis, the total amount of grain held, delineated by that which is held for others, is owned by the warehouse keeper and is obligated to depositors. Further, a warehouse keeper must keep easily retrievable records, by depositor, which show the depositor's name and address, and the kinds and amounts of grain: (a) received from the depositor with receipt dates and terms; (b) released to depositors with release dates; and (c) held for a depositor (updated daily).

Prohibit a grain warehouse keeper from altering a record entry without DATCP approval, unless it is to account either for handling losses, if the warehouse keeper corrects for handling losses at least monthly, or for errors or omissions related to the receipt or withdrawal of grain, if the warehouse keeper has documentation to support the correction. Further, whenever a grain warehouse keeper alters a record the keeper must clearly identify and explain the alteration so it is clear to any reviewer.

If records are kept in computerized form, require that either the keeper generates a daily hard copy printout or is able to retrieve and print any day's computerized record for at least six years. Require DATCP to review each warehouse grain keeper's records at least annually, or biennially if their annual financial statement shows a current ratio of at least 2 to 1, positive equity and a debt to equity ratio of not more than 2 to 1.

Require grain warehouse keepers to immediately provide a receipt for all grain received. The receipt must include: (a) the grain warehouse keeper's name, permanent address and warehouse location, and a statement indicating whether the grain warehouse keeper is a corporation; (b) a statement identifying the document as a warehouse receipt or other storage receipt, including the date and kind of grain received; (c) the net weight of grain received (d) the grade and quality of the grain, if determined; (e) the word "negotiable" or "nonnegotiable" conspicuously, if it is a warehouse receipt (if a grain warehouse keeper transfers depositor-owned grain to another warehouse keeper, the receiving keeper must issue a receipt that conspicuously bears the word "nonnegotiable"); and (f) a statement indicating that grain be removed from storage by a specified date (within three years of the deposit), unless it is a warehouse receipt, a receipt for grain owned by the Federal Commodity Credit Corporation or a receipt for grain pledged as collateral for a USDA loan. If grain is delivered to someone who is both a grain dealer and a warehouse keeper, the delivery is considered a deposit for storage unless the receipt is clearly designated otherwise.

*Insurance.* Require all grain warehouse keepers that are required to be licensed to maintain fire and extended coverage insurance issued by an authorized insurance company that covers all grain in the custody of the keeper, whether owned by the keeper or held for others, at the full local market value of the grain. The policy may not contain any deductible clause limiting the insurer's obligation to pay each depositor full value of their covered loss. Allow a grain

warehouse keeper to indemnify the insurer for a portion of each depositor claim paid, if it does not limit the insurer's obligation to make total payments to depositors. Unless written notice of an intended cancellation is sent to DATCP at least 30 days before taking effect, prohibit a required insurance policy from being cancelled. Require grain warehouse keepers to replace their insurance policy so that no lapse in coverage occurs when a policy is canceled and to provide DATCP with proof of a replacement policy (certification from the insurance company is acceptable) within 20 days of DATCP learning of the cancellation and at least 10 days before the cancellation takes effect. Further, require a licensed keeper to disclose the material terms of their fire, extended coverage and any liability insurance to depositors upon request. Prohibit grain warehouse keepers from misrepresenting the nature, coverage or material terms of their insurance policy to the Department or to any depositor.

*Business Practices.* Require grain warehouse keepers, when making a determination, to accurately determine and record the weight, grade and quality of grain using accurate weighing, testing or grading equipment. Further, require a grain warehouse keeper to maintain adequate facilities and equipment to protect grain held for others from loss or abnormal deterioration. Require a grain warehouse keeper to maintain grain inventories sufficient in quantity and quality to meet all outstanding depositor obligations and to deliver to a depositor, upon demand, the same grade and amount of grain as was deposited. However, if grain of appropriate grade is unavailable, allow the keeper to substitute, with the agreement of the depositor, either a monetary payment of equivalent value, or a sufficient amount of a higher grade of grain to provide equivalent value, based on current local grain prices (but prohibit a keeper from providing grain or payments in excess of the current value of the deposited grain). Prohibit grain warehouse keepers from misrepresenting the weight, grade or quality of grain received from or delivered to any person, from falsifying or conspiring to falsify any record or account, or from making any false or misleading representation to DATCP or to a depositor related to any APS program requirements. Require keepers to file the full amount of any additional security required by the DATCP-specified date, and if the grain warehouse keeper is licensed, prohibit the keeper from engaging in any activity that is inconsistent with a representation made in the grain warehouse keeper's annual license application.

## **Vegetable Contractors**

*Delete Vegetable Procurement, Financial Security, Grading and Tare Provisions.* On February 1, 2002, delete statutory provisions regarding vegetable procurement, financial security, grading and tare. The following generally summarizes the provisions deleted under the bill. Most vegetable contractors are required to pay annual fees to register with DATCP in order to enter into a procurement contract with a producer. Along with the registration, a contractor must submit an annual financial statement and disclose contractual obligations along with the contractor's liability to producers. If a contractor does not meet minimum financial standards, they are required to either pay producers on delivery or file security (of at least 75% of the contractor's anticipated maximum liability for the year) with DATCP. If DATCP believes the contractor does not have adequate security filed, they can further require that the contractor make payments upon delivery of all vegetables. If a contractor is found under the specified

default proceedings to have failed to pay a producer, DATCP may convert any of that contractor's security to pay the producer, with interest. If a contractor fails to follow these procedures, DATCP may suspend the contractor's license and the violator is subject to forfeitures, fines and imprisonment. Further, affected producers may bring an action against a contractor. Deleted provisions also include standards for grading vegetables as set by DATCP rule.

Unless otherwise noted, any provision in the bill related to vegetable contractors does not apply until February 1, 2002.

*Licensing and Application.* Require vegetable contractors that procure Wisconsin vegetables to obtain a nontransferable, annual license that expires on January 31, unless they (a) procure vegetables primarily for unprocessed, fresh market use and are licensed under the federal Perishable Agricultural Commodities Act, or (b) are a restaurant or retail food establishment that procures processing vegetables solely for retail sale at that establishment. Require DATCP to provide license forms and contractors to provide (a) the legal name of the applicant and any trade name under which they operate as a vegetable contractor; (b) a statement of whether the applicant is an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity (if a corporation or cooperative, the applicant must list each of their officers, if a partnership, the applicant must list each partner); (c) the primary business mailing address and the name of a responsible individual at that location; (d) the street address of each location the vegetable contractor operates from and the name of a responsible individual at each staffed location; (e) all required license fees and surcharges; (f) a financial statement, if required and not yet filed; and (g) other relevant information required by DATCP. As of January 1, 2002, require a vegetable contractor applying for a license for the license year that begins on February 1, 2002, to submit an application that complies with APS program requirements.

In addition, require a vegetable contractor to provide a sworn and notarized statement, signed by the applicant or their officer, with their license application. The statement must include: (a) the amount paid or owed, during the last fiscal year, to vegetable producers or agents under contract, or if the applicant has not yet operated in the state, an estimated amount of these contractual obligations during their first complete fiscal year; (b) the largest amount of unpaid contractual obligations that the vegetable contractor had at any time in their last completed fiscal year (if unpaid contractual obligations ever exceed this amount, further require a vegetable contractor to immediately notify DATCP); (c) the amount of unpaid contractual obligations at the time of application; (d) the amount in unpaid obligations that are due before the next license year; (e) the amount of unpaid contractual obligations under deferred payment contracts at the time of application (if unpaid contractual obligations under deferred payment contracts ever exceed this amount, require a vegetable contractor to immediately notify DATCP); (f) whether the applicant, their affiliates and subsidiaries will collectively grow more than 10% of the total acreage of any vegetable species grown or procured in that license year; (g) whether the applicant will pay cash on delivery under all vegetable procurement contracts in that license year; and (h) whether the applicant is a producer-owned cooperative or organization that procures vegetables solely from members under a cooperative marketing



method where they pay members a prorated share of profits. Require DATCP to approve or deny a license application within 30 days of receipt. Further, if a license is denied, DATCP must provide the applicant a written reason for the denial. If approved, a vegetable contractor must display a copy of the license at each business location operated in the state. Invalidate a license if a vegetable contractor fails to pay all obligations that were due in the previous license year by February 5 of the new license year. When DATCP issues an annual license, they are required to inform the vegetable contractor of their annual fund assessment, along with the quarterly installment due dates, amounts and late payment penalty.

*License Fees and Surcharges.* Unless DATCP specifies a different fee or surcharge by rule, require a vegetable contractor to pay a nonrefundable license processing charge of \$25 and the following applicable license fees and surcharges (fees and surcharges may not be prorated): (a) a fee of \$25 plus 5.75¢ for each \$100 in contractual obligations (however, the fee is reduced to \$25 plus 4.75¢ for each \$100 in contractual obligations if DATCP grades all graded vegetables procured from vegetable producers or agents); (b) a surcharge of \$500 if DATCP determines that a vegetable contractor operated without a license in the past year, in violation of the law, in addition to all payments due for the year of violation (payment of this surcharge would not relieve the applicant of any other civil or criminal liability, nor would it constitute evidence of any law violation); (c) a surcharge of \$100 if in the past year, the applicant failed to file a required annual financial statement by the statutory deadline; and (d) a renewal surcharge of \$100 if an applicant fails to renew a license by its expiration date. After December 31, 2001, deposit all license fees and surcharges paid under the current law vegetable procurement, financial security, grading and tare provisions to the APS fund.

Require DATCP to provide a written statement of all license fees and surcharges required with each license application form. In addition, DATCP must specify any applicable fee credit. If the balance in the APS fund contributed by vegetable contractors exceeds \$1,000,000 on November 30, DATCP must credit 50% of the excess amount against vegetable contractor license fees to contractors who file timely renewal applications for the next license year. Credit the amount on a prorated basis, in proportion to the total license fees paid in the past four license years. Prohibit DATCP from issuing an annual license until all DATCP-identified fees and statements are paid. If a fee is paid under protest, require DATCP to refund any amount deemed excessive.

*Financial Statements.* If a contractor's annual contractual obligations for vegetables (as notarized) exceeds \$500,000, require that contractor to file an annual financial statement with DATCP before the Department may first grant their license, and every license year thereafter, unless a vegetable contractor pays cash on delivery under all vegetable procurement contracts or is a producer-owned cooperative or organization that procures vegetables only from its producer owners. Require that a financial statement either be reviewed by an independent public accountant and signed under oath by the contractor regarding its accuracy or audited by an authorized public accountant. However, if a vegetable contractor's annual contractual obligations exceeds \$4 million, the financial statement must be audited by an authorized public accountant using generally accepted accounting and auditing standards. Unless the vegetable

contractor is a sole proprietor with an unaudited financial statement who must file a financial statement on a historical cost basis, require that annual financial statements be prepared according to generally accepted accounting principles. The financial statement of a parent organization, subsidiary, predecessor or successor is not an acceptable substitute.

For any vegetable contractor who has been in business for more than one year, the financial statement consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements and other information required by DATCP. If the vegetable contractor is a sole proprietor, that person must include business and personal financial statements. For those vegetable contractors in business for less than a year, the financial statement may consist of a balance sheet and notes. All filed financial statements must include a calculation of the contractor's ratio of the value of current assets to the value of current liabilities (current ratio) and the debt to equity ratio. Unless DATCP specifically approves an asset, for the purposes of calculating the current ratio and debt to equity ratio, vegetable contractors may not include the following assets: (a) a nontrade note or account receivable from an officer, director, employee, partner or stockholder, or from a member of the family of any of those individuals, unless the note or account receivable is secured by a first priority security interest in real or personal property; (b) a note or account receivable from a parent organization, subsidiary or affiliate, other than an employee; or (c) a note or account that has been receivable for more than one year, unless the vegetable contractor has established an offsetting reserve for Uncollectable notes and accounts receivable.

For license renewals, the required annual financial statement must be filed by the 15<sup>th</sup> day of the fourth month following the close of the vegetable contractor's fiscal year, unless a written extension request is filed at least ten days before the deadline and DATCP extends the filing deadline for up to 30 days. In addition, any vegetable contractor that contributes to the security fund pool may voluntarily file a financial statement with DATCP to lower their APS fund assessment or to avoid filing otherwise required security. Allow DATCP to reject any financial statement for not meeting set standards. Further, allow DATCP to require a licensed vegetable contractor to file with the Department an interim financial statement along with the vegetable contractor's sworn and notarized statement that the interim statement is correct.

*Security Requirements.* Unless a vegetable contractor pays cash on delivery for all procurement contracts or is a producer-owned cooperative or organization that procures vegetables only from members, require a contractor to file and maintain security with DATCP if when the vegetable contractor is licensed, their annual contractual obligations exceed \$500,000 and their required annual financial statement shows negative equity. Allow DATCP to release security filed for this purpose if a vegetable contractor pays the security fund pool quarterly assessment that would have been required if the vegetable contractor had been a pool participant on the most recent quarterly installment date and if the contractor either (a) reports, for at least two consecutive years, less than \$1,000,000 in annual contractual obligations, or (b) provides an annual financial statement that shows positive equity for at least two consecutive years.

In addition (except for a cooperative or cash-on-delivery contractor), require all vegetable contractors to file and maintain security to cover any reported unpaid contractual obligations that the contractor has under deferred payment contracts, unless the vegetable contractor files a required annual financial statement that shows positive equity, a current ratio of at least 1.25 to 1 and a debt to equity ratio of not more than 4 to 1. Allow DATCP to release security filed for this purpose if either a vegetable contractor (a) has no unpaid obligations under deferred payment contracts and will not use such contracts in the current license year, or (b) files two consecutive annual financial statements showing positive equity, a current ratio of at least 1.25 to 1 and a debt to equity ratio of not more than 4 to 1.

In addition, require vegetable contractors who filed security under the current law vegetable procurement, financial security, grading and tare provisions before February 1, 2002 to maintain that security amount. Allow DATCP to release this security on May 1, 2002, unless the bill otherwise requires the contractor to file security. Further, require DATCP to release security if a contractor who has paid all contractual obligations is no longer in business.

Allow DATCP to approve only specified forms of security, including currency. A commercial surety bond is allowable if it is payable to DATCP for the benefit of vegetable producers and agents, is issued by a person authorized to operate a surety business in the state, is issued as a continuous term bond that may be canceled only upon 90 days prior certified written notice or with DATCP's written agreement and is issued in forms, terms and conditions that the Department considers appropriate. A certificate of deposit or money market certificate is allowed if: (a) the certificate may not be canceled or redeemed without DATCP authorization and is issued or endorsed to the Department for the benefit of vegetable producers and agents; (b) no person may transfer or withdraw funds represented by the certificate without DATCP permission; (c) the certificate renews automatically without Departmental action; and (d) the certificate is issued in forms, terms and conditions that DATCP considers appropriate. An irrevocable bank letter is allowed if the letter of credit is payable to DATCP for the benefit of vegetable producers and agents, is issued on bank letterhead for an initial period of at least one year, renews automatically unless at least 90 days before the scheduled renewal date the issuing bank certifiably notifies DATCP that the letter of credit will not be renewed and is issued in forms, terms and conditions that the Department considers appropriate. Security filed under the current law vegetable procurement, financial security, grading and tare provisions before February 1, 2002 is allowable until January 1, 2003, at which time DATCP will withdraw its approval of any security that does not comply with the new requirements listed above. DATCP holds all security for the benefit of vegetable producers and agents. Allow DATCP to release security if the vegetable contractor files DATCP-approved alternative security of equal value.

*Security Payments.* If a contractor is required to maintain security, it must be at least equal to 75% of the largest amount of unpaid contractual obligations that the vegetable contractor had in their last completed fiscal year, or any higher amount since that time, in addition to, 100% of the reported unpaid contractual obligations that the vegetable contractor has under deferred payment contracts. Allow DATCP to release any security above the required amounts.

Allow DATCP to demand, in writing, additional security from a vegetable contractor if either the contractor fails to provide relevant, required information regarding security requirements, or if their existing security falls below the required amount for any reason, including depreciation in the value of the security filed with DATCP, increased obligations to vegetable producers or agents or the cancellation of any security filed with the Department. Require DATCP to indicate why additional security is required, the amount required and the filing deadline. The deadline must be within 30 days of when DATCP issues its demand for additional security. Although a vegetable contractor may request a hearing under state law, the request does not automatically stay a security demand. Further, if a vegetable contractor fails to provide the additional security, require the contractor to give written notice of that fact to all Wisconsin producers and agents from whom the contractor procures vegetables. If the vegetable contractor fails to give accurate notice within five days of the security filing deadline, require DATCP to promptly notify affected parties by publishing a Class 3 notice and allow the Department to notify individual affected producers or agents. If a vegetable contractor does not provide the required additional security, allow DATCP to suspend or revoke the vegetable contractor's license or to issue a summary order under these provisions that either prohibits the contractor from procuring vegetables from state producers or requires the vegetable contractor to pay cash on delivery.

*Security Fund Pool Assessments.* Require licensed vegetable contractors, unless they pay cash on delivery for all procurement contracts or are a producer-owned cooperative or organization that procures vegetables only from members, to pay fund assessments and allow the cooperative and cash-on-delivery contractors above to pay voluntary assessments unless either is disqualified. Require that annual fund assessments be paid in equal quarterly installments with the first installment due March 1, the second June 1, the third September 1 and the fourth December 1 of the license year, but allow any installment to be prepaid. If a contractor applies for a license during a license year, the fund assessment of all that year's quarterly installments that became due before that day must be paid with the first quarterly installment due after DATCP issues a license. A penalty of the greater of \$50 or 10% of the overdue installment amount is owed if a vegetable contractor fails to pay an installment when due. Unless DATCP rules specify differently, the annual assessment is the higher of \$20 or the sum of the following three determinations: (a) both the current assessment ratio and the debt to equity assessment ratio multiplied by the amount of contractual obligations in the last fiscal year, or if the applicant has not yet operated in this state, an estimated amount of contractual obligations incurred during the applicant's first complete fiscal year, and (b) the amount of unpaid contractual obligations under deferred payment contracts from the last fiscal year multiplied by a deferred payment assessment rate of 0.0025.

Current Assessment Ratio. If a vegetable contractor's financial statement shows a current ratio (the ratio of the value of current assets to the value of current liabilities) of at least 1.25 to 1, calculate the current ratio assessment (which if less than zero, the assessment is set at zero) by multiplying 0.00048 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00029, and in the 6<sup>th</sup> or higher, multiply 0) by the result of the following formula:

$$\left[ -1 \times \left( \frac{\text{current ratio} - 4}{2} \right) \right] + \left( \frac{0.60}{\text{current ratio} - 0.65} \right) + 0.25.$$

If a vegetable contractor's financial statement shows a current ratio of between 1.1 to 1 and 1.25 to 1, calculate the current ratio assessment by multiplying 0.00072 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00058, and in the 6<sup>th</sup> or higher, multiply 0.00035) by the result of the above formula. If a vegetable contractor's financial statement shows a current ratio of less than or equal to 1.1 to 1, calculate the current ratio assessment by multiplying 0.00072 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00058, and in the 6<sup>th</sup> or higher, multiply 0.00035) by 7.512617. For those vegetable contractors who do not file an annual financial statement, calculate the current ratio assessment by multiplying 0.00072 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00058, and in the 6<sup>th</sup> or higher, multiply 0.00035) by 3.84961.

Debt to Equity Assessment. If a vegetable contractor's financial statement shows positive equity and a debt to equity ratio of not more than 4 to 1, calculate the debt to equity ratio assessment (which if less than zero, the assessment is set at zero) by multiplying 0.000135 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00008, and in the 6<sup>th</sup> or higher, multiply 0) by the result of the following formula:

$$\left( \frac{\text{Debt / Equity Ratio} - 4}{4} \right)^3 + \left( \frac{\text{Debt / Equity Ratio} - 1.85}{2.5} \right) + 1.$$

If a vegetable contractor's financial statement shows a debt to equity ratio of between 4 to 1 and 6 to 1, calculate the debt to equity ratio assessment by multiplying 0.000203 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00016, and in the 6<sup>th</sup> or higher, multiply 0.0001) by the result of the above formula. If a vegetable contractor's financial statement shows negative equity or a debt to equity ratio of at least 6 to 1, calculate the debt to equity ratio assessment by multiplying 0.000203 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00016, and in the 6<sup>th</sup> or higher, multiply 0.0001) by 35.859145. For those vegetable contractors who do not file an annual financial statement, calculate the debt to equity ratio assessment by multiplying 0.000203 (except for in the contractor's 4<sup>th</sup> or 5<sup>th</sup> consecutive full license year participating in the security fund pool, multiply 0.00016, and in the 6<sup>th</sup> or higher, multiply 0.0001) by 1.34793.

Disqualified Vegetable Contractors. Disqualify a vegetable contractor from the security fund pool, and require those contractors to pay cash on delivery for producer vegetables if DATCP

issues a written notice disqualifying the vegetable contractor for cause, including (a) failure to pay required fund assessments or file a financial statement when due; or (b) failure to reimburse either the Department or a bond surety, within 60 days after a reimbursement demand is issued, for the full amount that DATCP or the surety paid to claimants because of that vegetable contractor's default. Further, disqualify a vegetable contractor from the security fund pool if DATCP denies, suspends or revokes the contractor's license. A contractor is also disqualified if they are required to file and maintain individual security with DATCP because their annual contractual obligations exceed \$1,000,000 and their required annual financial statement shows negative equity. Once DATCP determines that certain standards have been met, it may release a contractor's security and that contractor becomes eligible for security fund pool participation. A disqualified vegetable contractor may not be refunded any assessments and is liable for any unpaid assessments that were due before disqualification. A vegetable contractor no longer needs to pay assessments when disqualified.

*Records.* Require that records be kept for at least six years and be made available for DATCP inspection or copying. Require vegetable contractors to keep records under the current law vegetable procurement, financial security, grading and tare provisions and related DATCP rules. Further, copies of all written vegetable procurement contracts and a current record of all vegetable contractual obligations, payments and unpaid balances are required.

*Payments to Producers.* Require vegetable contractors to pay producers or agents according to their contract and unless the contract specifies differently, require that full payments be made by the 15th day of the month immediately following the month in which the vegetable contractor either (a) harvests or accepts delivery of vegetables, or (b) rejects or fails to harvest vegetables under a procurement contract. In addition, require contractors to pay all outstanding obligations to producers by January 31 of each license year, except (a) allow a contractor to pay obligations by the date specified in an approved deferred payment contract for processing vegetables delivered prior to January 1 and (b) for processing vegetables received in January, require a contractor to pay the contract amount by February 15 or by the 30th day after the date of delivery, whichever date is later. Further, require vegetable contractors to pay cash on delivery if their notarized statement made such assurance or if they are disqualified from the security fund pool. Prohibit anyone who buys vegetables from deducting any vegetable contractor license fee, surcharge or fund assessment from producer payments under a procurement contract.

*Deferred Payment Contracts.* Require that before a vegetable contractor offers a deferred payment contract to any producer, producers must vote by secret ballot to approve the contract and the contractor must file with DATCP any additional required security with a sworn statement that the deferred payment contract was approved by producer vote. Require the vegetable contractor to notify, in writing, all Wisconsin producers that provided the same type of vegetables in their last license year of the upcoming vote. The notice must include a copy of the proposed contract, an announcement of the meeting at which producers will vote and a mail ballot for those unable to attend.

*Insurance.* Unless a vegetable contractor pays cash on delivery under all procurement contracts or is a producer-owned cooperative or organization that procures vegetables only from members, require contractors that are required to be licensed to maintain fire and extended coverage insurance issued by an authorized insurance company that covers all vegetables in the custody of the vegetable contractor, whether owned by the contractor or held for others, at the full local market value of the vegetables. Further, require vegetable contractors to replace their required insurance policy so that no lapse in coverage occurs when a policy is canceled. Prohibit vegetable contractors from misrepresenting the nature, coverage or material terms of their insurance policy to the Department or to any producer or agent.

*Business Practices.* Require DATCP to promulgate rules establishing standard grading procedures, uniform grade standards (which conform to federal law regarding distribution and marketing of agricultural products) and tare determination standards. If a vegetable grade affects the amount received by a producer, require vegetable contractors to grade vegetables using the DATCP standard grading procedures. In addition, require the use of DATCP uniform grade standards, unless a vegetable procurement contract clearly specifies alternative grade standards. Further, any deduction for tare must be made according to DATCP rule. Prohibit vegetable contractors from misrepresenting the weight, grade or quality of vegetables received from any person, from falsifying or conspiring to falsify any record or account, or from making any false or misleading representation to DATCP or to a producer related to any APS program requirements. Require contractors to file the full amount of any additional security required by the DATCP-specified date and if the vegetable contractor is licensed, prohibit the contractor from engaging in any activity that is inconsistent with a representation made in the vegetable contractor's annual license application.

## **Milk Contractors**

*Delete Dairy Licenses and Financial Condition Provisions.* On May 1, 2002, delete statutory provisions regarding dairy licenses and financial condition. The following generally summarizes the provisions deleted under the bill. Wisconsin dairy plants are required to obtain a license and to submit a quarterly financial statement to DATCP in order to operate. If a dairy plant does not meet minimum financial standards, they are required to either file security with DATCP, to file an agreement giving a trustee selected by the producers control over the plant's processed milk or to pay producers generally 90% of the value of milk before accepting any additional milk on credit. The provisions also set deadlines for payment to producers. If a dairy plant is found under the specified default proceedings to have failed to pay a producer, DATCP may convert any of that plant's form of security (including assets held by a trustee) to pay the producer, with interest. If a dairy plant fails to follow these procedures, the violator is subject to fines and imprisonment.

Unless otherwise noted, any provision in the bill related to milk contractors does not apply until May 1, 2002.

*Licensing and Application.* Require milk contractors to obtain a nontransferable, annual DATCP license that expires on April 30, in order to receive milk in Wisconsin, to collect milk

from a farm in another state for shipment to their dairy plant or to acquire the right to market Wisconsin milk as an agent. Allow other out-of-state milk contractors who receive Wisconsin milk to voluntarily be licensed. Require DATCP to provide license forms and contractors to provide (a) the legal name of the applicant and any trade name under which they operate as a milk contractor (if the milk contractor is also a licensed dairy plant operator, the same legal name must be used); (b) a statement of whether the applicant is an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity (if a corporation or cooperative, the applicant must list each of their officers, if a partnership, the applicant must list each partner); (c) the primary business mailing address and the name of a responsible individual at that location; (d) the street address of each location the milk contractor operates from under the license and the name of a responsible individual at each staffed location; (e) all required license fees and surcharges; (f) a financial statement, if required and not yet filed; and (g) other relevant information required by DATCP. As of January 1, 2002, require a milk contractor applying for a license for the license year that begins on May 1, 2002, to submit an application that complies with APS program requirements.

In addition, require a milk contractor to provide a sworn and notarized statement, signed by the applicant or their officer, with their license application. The statement must include: (a) the amount paid or owed, during the last fiscal year, to milk producers or agents, or if the applicant has not yet operated in the state, an estimated amount of these payroll obligations during their first complete fiscal year; (b) the largest amount of unpaid payroll obligations that the milk contractor had at any time in their last completed fiscal year (if unpaid payroll obligations ever exceed this amount, further require a milk contractor who files security to immediately notify DATCP); (c) the identity of all producer agents from whom the contractor procures milk; and (d) other DATCP-required information. Require DATCP to approve or deny a license application within 30 days of receipt. Further, if a license is denied, DATCP must provide the applicant a written reason for the denial. If approved, a milk contractor must display a copy of the license at each business location operated in the state. When DATCP issues an annual license, they are required to inform the milk contractor of their annual fund assessment, along with the quarterly installment due dates, amounts, and late payment penalty.

*License Fees and Surcharges.* Unless DATCP specifies a different fee or surcharge by rule, require a milk contractor to pay a nonrefundable license processing charge of \$25 and the following applicable license fees and surcharges: (a) a surcharge of \$500 if DATCP determines that a milk contractor operated without a license in the past year, in violation of the law, in addition to all payments due for the year of violation (payment of this surcharge would not relieve the applicant of any other civil or criminal liability, nor would it constitute evidence of any law violation); (b) a surcharge of \$100 if in the past year, the applicant failed to file a required annual financial statement by the statutory deadline; and (c) a renewal surcharge of \$100 if an applicant fails to renew a license by its expiration date. Unless DATCP specifies a different fee by rule, require licensed milk contractors (except for agents who market to contractors that pay a monthly fee on the same milk) to pay by the 25<sup>th</sup> day of each month, a fee of 15¢ for each 100 pounds of Wisconsin milk procured in the previous month, along with a report of how many pounds were procured. In addition, require a contractor to pay a surcharge



of 20% of the monthly fee by the 25<sup>th</sup> day of the following month if they fail to make the monthly payment when due. After December 31, 2001, deposit all milk producer security fees paid under the current law dairy license and financial condition provisions to the APS fund.

Require DATCP to provide a written statement of all license fees and surcharges required with each license application form, and upon issuance of an annual license, a notice of monthly fee requirements which includes: (a) the method for computing the monthly fee; (b) the monthly fee due date; (c) the late payment surcharge that would be added; and (d) any applicable fee credit. If the balance in the APS fund contributed by milk contractors exceeds \$4,000,000 on February 28, DATCP must credit 50% of the excess amount against milk contractor monthly license fees by crediting one-twelfth of the total annual credit each month to contractors who file timely license renewal applications for the next year. The annual credit is prorated, in proportion to the total monthly license fees paid in the past four license years. Prohibit DATCP from issuing an annual license until all DATCP-identified fees and statements are paid. If a fee is paid under protest, require DATCP to refund any amount deemed excessive.

*Financial Statements.* If a contractor's annual payroll obligations for milk (as notarized) exceed \$1,500,000, require that contractor to file an annual financial statement with DATCP before the Department may first grant their license, and every license year thereafter, unless their annual payroll obligations are less than \$1,500,000 or they procure milk only as a producer agent. Require that an annual financial statement either be reviewed by an independent public accountant and signed under oath by the contractor regarding its accuracy or audited by an authorized public accountant. However, if a milk contractor's annual payroll obligations exceeds \$6 million, the financial statement must be audited by an authorized public accountant using generally accepted accounting and auditing standards. Unless the milk contractor is a sole proprietor with an unaudited financial statement who must file a financial statement on a historical cost basis, require that annual financial statements be prepared according to generally accepted accounting principles. The financial statement of a parent organization, subsidiary, predecessor or successor is not an acceptable substitute.

For any milk contractor who has been in business for at least one year, the financial statement consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements and other information required by DATCP. If the milk contractor is a sole proprietor, that person must include business and personal financial statements. For those milk contractors in business for less than a year, the annual financial statement may consist of a balance sheet and notes. Require licensed milk contractors that do not participate in the security fund pool to file quarterly financial statements for the first three quarters of the contractor's fiscal year within 60 days of the end of each fiscal quarter, along with the milk contractor's sworn and notarized statement that each statement is correct. A quarterly annual financial statement may consist of a balance sheet and income statement.

All filed financial statements must include a calculation of the contractor's ratio of the value of current assets to the value of current liabilities (current ratio) and their debt to equity ratio. Unless DATCP specifically approves an asset, for the purposes of calculating the current

ratio and debt to equity ratio, milk contractors may not include the following assets: (a) a nontrade note or account receivable from an officer, director, employee, partner or stockholder, or from a member of the family of any of those individuals, unless the note or account receivable is secured by a first priority security interest in real or personal property; (b) a note or account receivable from a parent organization, subsidiary or affiliate, other than an employee; or (c) a note or account that has been receivable for more than one year, unless the milk contractor has established an offsetting reserve for Uncollectable notes and accounts receivable.

For license renewals, required annual financial statement must be filed by the 15<sup>th</sup> day of the fourth month following the close of the milk contractor's fiscal year, unless a written extension request is filed at least 10 days before the deadline and DATCP extends the filing deadline for up to 30 days. In addition, any licensed milk contractor may voluntarily file a financial statement with DATCP to lower their APS fund assessment or to avoid paying the assessment. Allow DATCP to reject any financial statement for not meeting set standards. Further, allow DATCP to require a licensed milk contractor to file with the Department an interim financial statement along with the milk contractor's sworn and notarized statement that the interim statement is correct.

*Security Requirements.* Require a milk contractor to file and maintain security with DATCP if when the milk contractor is first licensed, their annual payroll obligations exceed \$1,500,000 and their required annual financial statement shows negative equity. Allow DATCP to release security filed for this purpose if a milk contractor pays the security fund pool quarterly assessment that would have been required if the milk contractor had been a pool participant on the most recent quarterly installment date and if the contractor either (a) reports, for at least two consecutive years, less than \$1,500,000 in annual payroll obligations, or (b) provides an annual financial statement that shows positive equity for at least two consecutive years.

In addition, require milk contractors who filed security under the current law dairy license and financial condition provisions before May 1, 2002 to maintain that security amount. Allow DATCP to release this security on August 1, 2002, unless the bill otherwise requires the contractor to file security. Further, require DATCP to release security if a milk contractor who has paid all payroll obligations is no longer in business.

Allow DATCP to approve only specified forms of security, including currency. A commercial surety bond is allowable if it is payable to DATCP for the benefit of milk producers and agents, is issued by a person authorized to operate a surety business in the state, is issued as a continuous term bond that may be canceled only upon 90 days prior certified written notice or with DATCP's written agreement and is issued in forms, terms and conditions that the Department considers appropriate. A certificate of deposit or money market certificate is allowed if: (a) the certificate may not be canceled or redeemed without DATCP authorization and is issued or endorsed to the Department for the benefit of milk producers and agents; (b) no person may transfer or withdraw funds represented by the certificate without DATCP permission; (c) the certificate renews automatically without Departmental action; and (d) the certificate is issued in forms, terms and conditions that DATCP considers appropriate. An

irrevocable bank letter is allowed if the letter of credit is payable to DATCP for the benefit of milk producers or agents, is issued on bank letterhead for an initial period of at least one year, renews automatically unless at least 90 days before the scheduled renewal date the issuing bank certifiably notifies DATCP that the letter of credit will not be renewed and is issued in forms, terms and conditions that the Department considers appropriate. Security filed under the current law dairy license and financial condition provisions before May 1, 2002 is allowable until January 1, 2003, at which time DATCP will withdraw its approval of any security that does not comply with the new requirements listed above. DATCP holds all security for the benefit of milk producers and agents. Allow DATCP to release security if the milk contractor files DATCP-approved alternative security of equal value.

*Qualified Producer Agents.* Require DATCP to promulgate rules regarding qualified producer agents (milk contractors that procure milk in the state solely as producer agents and comply with DATCP rules regarding qualified producer agents) that include requiring a qualified producer agent to have a written contract with each milk producer from whom the qualified producer agent procures milk from in the state. Further, require such contracts to disclose that the producer agent: (a) does not take title to the milk producer's milk; (b) holds all milk receipts in trust for milk producers; and (c) has less secured or indemnified obligations to milk producers than those obligations of other milk contractors. Allow DATCP to promulgate these rules as emergency rules without the finding of emergency for use before the effective date of the permanent rule, as long the emergency rules are in effect for fewer than 150 days, unless extended by the Legislature under current law provisions.

*Security Payments.* If a milk contractor, other than a contractor who acts only as a qualified producer agent, is required to maintain security, the security must be at least equal to 75% of the largest amount of unpaid payroll obligations that the milk contractor had in their last completed fiscal year, or any higher amount since that time. A milk contractor who contributes to the APS fund and acts only as a qualified producer agent is required to maintain security prior to April 30, 2007, of the lesser of \$500,000 or 7.5% of the largest amount of unpaid payroll obligations that the producer agent had in their last completed fiscal year, or any higher amount since then. A milk contractor who acts only as a qualified producer agent, but does not contribute to the APS fund is required to maintain security, of percentage amounts depending on the date of the beginning of the license year as shown below, of the largest amount of unpaid payroll obligations that the qualified producer agent had at any time in their last completed fiscal year, or any higher amount since that time. Allow DATCP to release any security above the required amounts.

For a license year beginning on May 1, 2002	15%
For a license year beginning on May 1, 2003	30
For a license year beginning on May 1, 2004	40
For a license year beginning on May 1, 2005	60
For a license year beginning after May 1, 2006	75

Allow DATCP to demand, in writing, additional security from a milk contractor if either the contractor fails to provide relevant, required information regarding security requirements,

or if their existing security falls below the required amount for any reason, including depreciation in the value of the security filed with DATCP, increased obligations to milk producers or agents or the cancellation of any security filed with the Department. Require DATCP to indicate why additional security is required, the amount required and the filing deadline. The deadline must be within 30 days of when DATCP issues its demand for additional security. Although a milk contractor may request a hearing under state law, the request does not automatically stay a security demand. Further, if a milk contractor fails to provide the additional security, require the contractor to give written notice of that fact to all Wisconsin producers and agents from whom the contractor procures milk. If the milk contractor fails to give accurate notice within five days of the security filing deadline, require DATCP to promptly notify affected parties by publishing a Class 3 notice and allow the Department to notify individual affected producers or agents. If a milk contractor does not provide the required additional security, allow DATCP to suspend or revoke the milk contractor's license or to issue a summary order.

*Security Fund Pool Assessments.* Require licensed milk contractors that do not file annual and quarterly financial statements to pay security fund pool assessments, unless they are disqualified. Further, unless they are disqualified, require licensed milk contractors to pay security fund pool assessments if their annual, quarterly or interim financial statement shows a current ratio of less than 1.25 to 1, a debt to equity ratio of more than 2 to 1 or negative equity, until the file two consecutive annual financial statements that show at least 1.25 to 1, a debt to equity ratio of less than 2 to 1 and positive equity. Allow other licensed milk contractors to pay voluntary assessments unless they are disqualified. Require that annual fund assessments be paid in equal quarterly installments with the first installment due June 1, the second September 1, the third December 1 and the fourth March 1 of the license year, but allow any installment to be prepaid. If a contractor applies for a license during a license year, the fund assessment of all that year's quarterly installments that became due before that day must be paid with the first quarterly installment due after DATCP issues a license. However, if the contractor is required to apply mid-year because their quarterly or interim financial report shows a current ratio of less than 1.25 to 1, a debt to equity ratio of more than 2 to 1 or negative equity, that contractor needs only pay the quarterly installments due after the requirement takes effect. A penalty of the greater of \$50 or 10% of the overdue installment amount is owed if a milk contractor fails to pay an installment when due. Unless DATCP rules specify differently, the annual assessment is the higher of \$20 or the sum of the current assessment ratio and the debt to equity assessment ratio multiplied by the amount of payroll obligations, in the last fiscal year, or if the applicant has not yet operated in this state, multiplied by an estimated amount of payroll obligations incurred during the applicant's first complete fiscal year.

Current Assessment Ratio. If a milk contractor's financial statement shows a current ratio (the ratio of the value of current assets to the value of current liabilities) of at least 1.25 to 1, calculate the current ratio assessment (which if less than zero, the assessment is set at zero) by multiplying 0.001 (except for in the contractor's 3<sup>rd</sup> consecutive full license year participating in the security fund pool, multiply .0007, in the 4<sup>th</sup> multiply 0.0003 and in the 5<sup>th</sup> or higher, multiply 0) by the result of the following formula:

$$\left[ -1 \times \left( \frac{\text{current ratio} - 3}{6} \right) \right] + \left( \frac{0.55}{\text{current ratio}} \right) + 0.075.$$

If a milk contractor's annual financial statement shows a current ratio of between 1.05 to 1 and 1.25 to 1, calculate the current ratio assessment by multiplying 0.0015 (except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000675) by the result of the above formula. If a milk contractor's financial statement shows a current ratio of less than or equal to 1.05 to 1, calculate the current ratio assessment by multiplying 0.0015 (except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000675) by 0.1201478. For a milk contractor who acts only as a producer agent (including milk contractors outside of the state that receive Wisconsin milk) and does not file an annual financial statement, the current ratio assessment rate is 0.00025, except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, the rate is 0.000175. For all other milk contractors who do not file an annual financial statement, calculate the current ratio assessment by multiplying 0.0015 (except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.000675) by 0.103005.

Debt to Equity Assessment. If a milk contractor's annual financial statement shows positive equity and a debt to equity ratio of not more than 2 to 1, calculate the debt to equity ratio assessment (which if less than zero, the assessment is set at zero) by multiplying 0.0015 (except for in the contractor's 3<sup>rd</sup> consecutive full license year participating in the security fund pool, multiply .001, in the 4<sup>th</sup> multiply 0.0005 and in the 5<sup>th</sup> or higher, multiply 0) by the result of the following formula:

$$\left( \frac{\text{Debt / Equity Ratio} - 2}{3} \right)^9 + \left( \frac{\text{Debt / Equity Ratio}}{3.25} \right)^5 + 0.025.$$

If a milk contractor's annual financial statement shows a debt to equity ratio of between 2 to 1 and 3.1 to 1, calculate the debt to equity ratio assessment by multiplying 0.00225 (except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.001) by the result of the above formula. If a milk contractor's financial statement shows negative equity or a debt to equity ratio of at least 3.1 to 1, calculate the debt to equity ratio assessment by multiplying 0.00225 (except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.001) by 0.8146917. For a milk contractor who acts only as a producer agent (including milk contractors outside of the state that receive Wisconsin milk) and does not file an annual financial statement, the debt to equity ratio is 0.00025, except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, the rate is 0.000175. For all other milk contractors who do not file an annual financial statement, calculate the debt to equity ratio assessment by

multiplying 0.00225 (except for in the contractor's 5<sup>th</sup> or higher consecutive full license year participating in the security fund pool, multiply 0.001) by 0.11325375.

*Disqualified Milk Contractors.* Disqualify a milk contractor from the security fund pool if DATCP issues a written notice disqualifying the milk contractor for: (a) failure to pay required fund assessments or file a financial statement when due; or (b) failure to reimburse either the Department or a bond surety, within 60 days after a reimbursement demand is issued, for the full amount that DATCP or the surety paid to claimants because of that milk contractor's default. If a milk contractor files an annual, quarterly or interim financial statement that shows a current ratio of less than 1.25 to 1, a debt to equity ratio of more than 2 to 1 or negative equity, prohibit that contractor from engaging in any activities that require a milk contractor license if they are disqualified from the security fund pool for one of the above reasons. Further, disqualify a milk contractor from the security fund pool if DATCP denies, suspends or revokes the contractor's license. Unless a contractor procures milk solely as a qualified producer agent, contributes to the APS fund and maintains security prior to April 30, 2007 of the lesser of \$500,000 or 7.5% of the largest amount of unpaid payroll obligations that the producer agent had in their last completed fiscal year, or any higher amount since then, a contractor is also disqualified if they are required to file and maintain individual security with DATCP because their annual payroll obligations exceed \$1,500,000 and their required annual financial statement shows negative equity. Once DATCP determines that certain standards have been met, it may release a contractor's security and that contractor becomes eligible for security fund pool participation. A disqualified milk contractor may not be refunded any assessments and is liable for any unpaid assessments that were due before disqualification. A milk contractor no longer needs to pay assessments when disqualified.

*Records.* Require milk contractors to keep and make available for DATCP inspection or copying for at least six years, accurate records and accounts of milk receipts, payments for milk received, the amounts owed to milk producers and any other records specified by DATCP rule. Further, allow DATCP to promulgate rules requiring a milk contractor to file periodic reports of information need under the APS program.

*Payments to Producers.* Require milk contractors, other than qualified producer agents, to make an initial payment to producers by the 4<sup>th</sup> of each month for producer milk received during the first 15 days of the preceding month. The initial payment would be based on the greater of 80% of the Class III price published by the regional federal milk market administrator for the month before the milk was received or 80% of the contract price. Require that the balance due for milk received in the preceding month be paid by the 19<sup>th</sup> of each month.

Require qualified producer agents to pay producers by the last day of each month for producer milk received during the first 10 days of that month. Require qualified producer agents to pay producers by the 10<sup>th</sup> day of each month for producer milk received during the 11<sup>th</sup> through the 20<sup>th</sup> day of the preceding month. Base the payments on the greater of 80% of the Class III price published by the regional federal milk market administrator for the month before

the milk was received or 80% of the contract price. Require qualified producer agents to pay the balance due for milk received in the preceding month by the 20<sup>th</sup> of each month.

Allow DATCP to promulgate rules that require a milk contractor to provide producers or agents a written explanation of each payment, including information related to milk contractor, producer or agent identification, the pay period, the volume of milk received, the grade of milk, milk test results, milk price and adjustments, the gross and net amount due, the average gross pay per hundredweight less hauling charges and deductions and assignments.

*Insurance.* Require milk contractors to maintain fire and extended coverage insurance issued by an authorized insurance company (unless the contractor is voluntarily licensed) that covers all milk and products in the possession of the milk contractor at the full value of the milk. Further, require milk contractors to replace their required insurance policy so that no lapse in coverage occurs when a policy is canceled. Prohibit milk contractors from misrepresenting the nature, coverage or material terms of their insurance policy to the Department or to any producer or agent.

*Business Practices.* Prohibit milk contractors from falsifying or conspiring to falsify any record or account, or from making any false or misleading representation to DATCP or to a producer related to any APS program requirements. Require contractors to file the full amount of any additional security required by the DATCP-specified date and if the milk contractor is licensed, prohibit the contractor from engaging in any activity that is inconsistent with a representation made in the milk contractor's annual license application.

**Veto by Governor [B-9 and B-10]:** Delete a January 1, 2002 effective date for a single cross reference regarding a warehouse keeper's liability, to correct a technical error that would have provided two different effective dates (January 1, 2002 and September 1, 2002). Thus, the act specifies that the effective date of the cross reference is September 1, 2002 as are other provisions regarding grain dealers and warehouse keepers.

Delete requirements that qualified producer agents pay producers on a different schedule than milk contractors for producer milk received. The effect is to include qualified producer agents in the requirement that all milk contractors make an initial payment to producers by the 4<sup>th</sup> of each month for producer milk received during the first 15 days of the preceding month. The initial payment is based on the greater of 80% of the Class III price published by the regional federal milk market administrator for the month before the milk was received or 80% of the contract price. Qualified producer agents (as milk contractors) are also subject to the requirement that the balance due for milk received in the preceding month be paid by the 19<sup>th</sup> of each month.

[Act 16 Sections: 168, 397b thru 400, 403, 404 thru 407, 1104, 1128, 2382, 2385 thru 2389, 2394, 2400 thru 2403, 2404, 2405, 2414 thru 2420, 2813, 2814, 2856b, 3023, 3456, 9104(1),(1v), (2)&(4z), 9204(1)&(2) and 9404(1),(2),(3)&(4)]

[Act 16 Vetoes Sections: 2813 and 9404(1)]